



Patent - EVU-02-PUSA

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Amon et al.	)	<b>Group Art Unit:</b> Unknown
Serial No.: 10/001,761	)	
Filed: 10/31/2001	)	<b>Examiner:</b> Unknown
Title: APPARATUS AND METHOD FOR	)	
PROVIDING A PROVIDER-	)	
SELECTED MESSAGE IN	)	
RESPONSE TO A USER REQUEST	)	
FOR USER-SELECTED	)	
INFORMATION	)	

**POWER OF ATTORNEY / REVOCATION OF PREVIOUS POWERS  
AND  
CHANGE OF CORRESPONDENCE ADDRESS**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

1. Attached hereto as Exhibit A is a copy of a Patent Assignment between eVU Technologies, Inc. (Assignor) and Thomas Amon (Assignee), sent for recording in the PTO on March 12, 2002.
2. Attached hereto as Exhibit B is a copy of a Co-Equal License Agreement between Thomas Amon (Licensor) and eVU Technologies, Inc. (Licensee), sent for recording the same day.
3. Attached hereto as Exhibit C is a copy of a Co-Equal License Agreement between Thomas Amon (Licensor) and SpeedVu, Inc. (Licensee), sent for recording the same day.
4. Attached hereto as Exhibit D is a copy of a General Assignment of assets between eVU Technologies, Inc. (Assignor) and David R. Haberbusch (Assignee), sent for recording the same day.
5. Attached hereto as Exhibit E is a copy of an Asset Purchase Agreement between David R. Haberbusch (Seller) and Harvest eVu, LLC (Buyer), sent for recording the same day.

6. Attached hereto as Exhibit F is a copy of an Asset Acquisition Agreement between Harvest eVu, LLC (Harvest eVu) and Edgecast Software, Inc. (Edgecast), sent for recording the same day.

7. The chain of title of the above-identified application from the initial filing to present is as follows, in chronological order:

A. Inventors assigned the rights to Thomas Amon by assignment sent for recording with the original application on August 11, 1997;

B. Thomas Amon assigned the rights to Internet Commercial Systems, Inc., on December 17, 1997 (See Exhibit A, third paragraph);

C. Internet Commercial Systems, Inc. changed its name to Neutron Net.com, Inc. on October 12, 1999, and then to eVU Technologies, Inc. on January 25, 2001 (See Exhibit A, second paragraph);

D. eVU Technologies, Inc. assigned the rights back to Thomas Amon on or about March 16, 2001, effective September 8, 2000 (Exhibit A);

E. Thomas Amon granted co-exclusive licenses to eVU Technologies, Inc. and SpeedVu, Inc., on or about March 16, 2001, effective September 8, 2000 (Exhibits B and C), along with the joint authority to prosecute the above-identified application (see Article VI of both Exhibit B and C);

F. eVU Technologies, Inc. assigned its co-exclusive licensee rights to David R. Haberbush on December 3, 2001 (Exhibit D);

G. David R. Haberbush assigned his co-exclusive licensee rights to Harvest eVu, LLC on or about December 26, 2001 (Exhibit E);

H. Harvest eVu, LLC sold its exclusive licensee rights to Edgecast Software, Inc. on or about January 7, 2002 (Exhibit F);

8. Thus, the current assignee of the entire interest of the above-identified application is Mr. Thomas Amon, and the current co-exclusive licensees with the authority to jointly prosecute the above-identified application are: 1) SpeedVu, Inc.; and 2) Edgecast Software, Inc.

9. A Power of Attorney including the above-referenced Exhibits A-F has already been filed in the parent application (Serial No. 08/912,991, now abandoned). Nonetheless, this Power of Attorney and Change of Correspondence Address is being filed for the present application (Serial No. 10/001,761) to ensure the Patent Office records are up to date for the present application.

10. In conformance with 37 CFR § 3.73(b), we, the undersigned co-exclusive licensees, hereby certify that all documents in connection with the chain of title have been reviewed, as set forth

herein, and to the best of our knowledge all right, title and interest in and to the above-identified application is with Thomas Amon, and we are authorized by Thomas Amon as co-exclusive licensees to prosecute the above-identified application as set forth herein.

11. We, the undersigned co-exclusive licensees, having the authority to jointly prosecute the above-identified application as evidenced herein, hereby revoke all powers of attorney previously given, if any, and appoint Mr. Neal M. Cohen, a registered patent attorney (Reg. No. 41,683, Customer Number 23410) licensed to practice law in the State of California, to prosecute and transact all business in the Patent and Trademark Office connected with the above-identified application.

Please address all future correspondence to Mr. Cohen at the address associated with his Customer Number 23410 ----->



**23410**

PATENT TRADEMARK OFFICE

*Eric Turner*  
SpeedVu, Inc.

by Eric Turner, President  
[print name AND title]

*Nick Dank-mey*  
Edgecast Software, Inc.

by Nick Dank-mey, President  
[print name AND title]

Exhibit

A

## PATENT ASSIGNMENT

This Patent Assignment is effective as of September 8, 2000, by and between eVU Technologies, Inc., a California corporation ("Assignor"), and Thomas C. Amon, Jr. of Santa Ana, California ("Assignee").

WHEREAS, effective October 12, 1999, Assignor changed its name from "Internet Commercial Systems, Inc." to "Neutron Net.com, Inc." and effective January 25, 2001, changed its name from "Neutron Net.com, Inc." to "eVU Technologies, Inc.";

WHEREAS, by prior assignment from Thomas C. Amon, Jr. dated December 17, 1997 to Internet Commercial Systems, Inc., Assignor owns all the rights in and to the patent application filed with the United States Patent Office, entitled "AN IMPROVED APPARATUS AND METHOD FOR PROVIDER SELECTED MESSAGE IN RESPONSE TO A USER REQUEST FOR USER-SELECTED INFORMATION", Serial No. 08/912991, filed on August 11, 1997, Attorney Docket No 9124-003. ("Patent Application"); and

WHEREAS, Assignor desires to assign all of its right, title and interest in and to the Patent Application, and Assignee desires to acquire the entire right, title and interest in and to the Patent Application.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor hereby acknowledges and agrees to the following:

Assignor does hereby acknowledge that Assignor has irrevocably sold, assigned, transferred and set over, and does hereby irrevocably sell, assign, transfer and set over, unto Assignee, his successors, legal representatives and assigns, the entire right, title and interest throughout the world in, to and under (i) the Patent Application and all extensions, renewals and reissues thereof, the underlying inventions described therein and all future improvements thereon; (ii) all applications and Letters Patent of the United States which may be filed and/or granted thereon and all divisions, reissues, renewals, continuations, continuations in-part and extensions thereof; (iii) all rights of priority provided by the International Convention for the Protection of Industrial Property, as amended, or by any convention which may henceforth be substituted for it; (iv) all applications and Letters Patent which may hereafter be filed and/or granted for any of the inventions described in the Patent Application in any country or countries foreign to the United States and all divisions, reissues, renewals, continuations, continuations in-part and extensions thereof (items (i) through (iv) are collectively referred to as the "Assigned Patents"); and (v) the right, if any, to sue or bring any action for past, present and future infringement of the Assigned Patents. Assignor hereby authorizes and requests the Commissioner of Patents of the United States, and any official of any country or countries foreign to the United States, whose duty it is to issue patents on applications for aforesaid, to issue all Letters Patent for the applicable Assigned Patents to Assignee, his successors, legal representatives and assigns, in accordance with the terms of this instrument.

Assignor hereby covenants and agrees that Assignor will cooperate with Assignee in the prosecution of U.S. patent applications and foreign counterparts on the inventions described in the Patent Application and any improvements thereon and will communicate to Assignee, his successors, legal representatives and assigns, any facts known to Assignor respecting the Assigned Patents, and testify in any legal proceedings, sign all required papers, execute all divisional, continuing and reissue applications, make all rightful oaths and generally do everything possible to aid Assignee, his successors, legal representatives and assigns, to obtain, maintain and enforce proper patent protection for the Assigned Patents in all countries.

Executed this 11<sup>th</sup> day of MARCH, 2001.

Assignor: eVU Technologies, Inc.

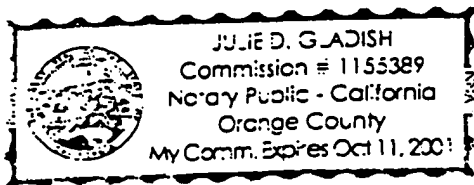
By: [Signature]

Title: President

State of California )  
 ) ss.  
County of Orange )

On March 16, 2001 before me, Julie D. Gladish, Notary Publ, duly  
commissioned and sworn, personally appeared Curt A. Hutten,  
~~personally known to me or~~ proved to me on the basis of satisfactory evidence to be the person(x) whose  
name(x) is ~~(are)~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the  
same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the  
person(x), or the entity upon behalf of which the person(x) acted, executed the instrument.

WITNESS my hand and official seal.



Julie D. Gladish  
SIGNATURE OF NOTARY

Exhibit

B

## Co-Equal License Agreement

This Co-Equal License Agreement ("Agreement") is entered into by and between Thomas Amon ("Licensor"), an individual, and eVU Technologies, Inc., a California corporation, formerly known as Internet Commercial Systems, Inc. and Neutron Net.com, Inc., having a place of business at 26072 Merit Circle, Suite 112, Laguna Hills, California 92653 (hereinafter, "Licensee"), effective as of September 8, 2000 (hereinafter the "Effective Date").

WHEREAS, Licensor has created, developed or invented or was assigned the subject matter of a patent application described below;

WHEREAS, Licensor will also concurrently grant, on even date herewith, a Co-Equal license identical to the terms and conditions herein to SpeedVu.com, Inc., a California corporation, located at 24 Corporate Plaza, Suite 170, Newport Beach, California 92660 ("Co-Equal Licensee"); and

WHEREAS, Licensee desires to obtain a license to Licensed Patent Rights (as described below) and Licensor is willing to grant such license on the terms and conditions set forth below.

NOW THEREFORE, in view of the above recitals and the following mutual covenants and promises, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

Capitalized Terms used and not otherwise defined herein shall have the meaning set forth below.

"Confidential Information" shall mean that information, data, methods, trade secrets, or inventions which is disclosed in the four corners of the Patent Application, except to the extent that that such information (i) enters the public domain without breach of this Agreement (including through issuance of a patent), (ii) is lawfully received from a third party without restriction on disclosure and without breach of a nondisclosure obligation, or (iii) was known by Licensee without restriction prior to receiving such information from Licensor.

"Improvements" shall mean any invention, development, discovery, device, improvement, derivative, know-how, technical information or other technology discovered, made, conceived and/or reduced to practice or otherwise acquired, possessed or controlled by either party, that is related to the Licensed Patent Rights.

"Licensed Patent Rights" shall mean all rights under all Valid Claims of the Patent Application. Licensed Patent Rights do not include any product, software or technology including but not limited to technical know-how, of either party (or of the Co-Equal Licensee), or any Improvements created by Licensor, Licensee or the Co-Equal Licensee.



**"Licensed Product"** shall mean any product made, used, sold, imported, licensed or distributed by Licensee, the manufacture, use, sale, offer to sell, export or import of which would constitute an infringement of any of the Licensed Patent Rights, but for this Agreement.

**"Licensed Territory"** shall mean the United States of America and the foreign countries listed in Attachment A (excluding those territories with respect to which Licensee has elected not to participate under Section 6.3).

**"Manufacturer"** means a party that manufactures and supplies Licensed Products to Licensee for resale by Licensee.

**"Patent Application"** shall mean Licensor's pending patent application, filed on August 11, 1997, in the United States Patent and Trademark Office ("USPTO"), Application Serial Number 08/912991 entitled AN IMPROVED APPARATUS AND METHOD FOR PROVIDER SELECTED MESSAGE IN RESPONSE TO A USER REQUEST FOR USER-SELECTED INFORMATION, and any continuation, re-examination, reissue or divisional application thereof, and any other patent application filed in the countries listed in Attachment A, claiming priority to the USPTO patent application. Patent Application does not include any continuation or continuation-in-part or other patent applications with respect to the portion of such applications that include Improvements.

**"Patent Prosecution"** shall mean the process of acquiring patent rights under the Patent Application.

**"Patent Prosecution Costs"** shall mean all fees, costs and expenses incurred by Licensee and the Co-Equal Licensee in connection with Patent Prosecution, including but not limited to issue and maintenance fees, attorney fees incurred in: (a) in responding to USPTO and other foreign patent offices and/or agencies correspondence, (b) responding to objections and/or rejections to any content of the Patent Application during the Patent Prosecution, and/or (c) for appealing any USPTO and/or other agency's decisions, either within the USPTO or any other appropriate judicial venues.

**"Valid Claims"** shall mean (a) issued claims of an issued patent that has not (i) expired or been cancelled; (ii) been declared invalid by unreversed and unappealable decision of a court or other appropriate body of competent jurisdiction, (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise; (iv) been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual Agreement; or (b) claims in the Patent Application that are being actively prosecuted according to this Agreement and which have not been (i) cancelled, (ii) withdrawn from consideration, (iii) finally determined to be unallowable by the applicable government authority (and from which no appeal is or can be taken), and/or (iv) abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written consent.

## ARTICLE II LICENSE GRANT AND COVENANTS

### 2. LICENSE.

2.1 Licensors hereby grants to Licensee, under the Licensed Patent Rights, within the Licensed Territory, a perpetual, irrevocable except as provided in Article X, non-transferable, royalty-free, co-exclusive license, with the right to make, have made, use, develop, make improvements to, import, have imported, offer to sell, sell, lease or otherwise commercialize Licensed Products. As used herein, "co-exclusive" means that the license rights granted herein are exclusive to Licensee and Co-Equal Licensee.

2.2 Except as expressly stated in this Agreement, no other rights, immunity or licenses are granted to Licensee under this Agreement, either expressly, or by implication, estoppel or otherwise. Should other rights arise that were not expressly granted by Licensors, then Licensee, Licensors and the Co-Equal Licensee will meet to discuss a grant of such rights. Licensee shall have no rights in or under any patents issued from a continuation, continuation-in-part, or divisional patent application(s) with respect to the portion of such applications that are based upon or include claims to Improvements created by Licensors or the Co-Equal Licensee.

2.3 Licensee shall have the right, subject to the terms of this Section 2.3, to sublicense the rights granted in Section 2.1: (i) to end users of Licensed Product for their internal use only, (ii) to Manufacturers, resellers, value added resellers, or original equipment manufacturers, or other distributors of Licensed Product, to manufacture, supply, distribute, or sell Licensed Product for Licensee, under the terms and conditions of this Agreement; and (iii) to third parties engaged by Licensee to collaborate in the development of Licensed Product; provided, that Licensee is the exclusive owner of such Licensed Product. Licensee agrees that the effectiveness of any sublicense is conditioned upon execution by the sublicensee of a written sublicense agreement containing provisions at least as favorable to Licensors as those in Sections 3, 4.3, and 7 of this Agreement. All such sublicenses shall terminate upon any termination of this Agreement (except as provided in Section 10.3) and shall include a provision to that effect.

2.4 Except as expressly permitted herein, Licensee shall not assign, transfer or sublicense (by contract, operation of law or otherwise), this Agreement or any right or obligation hereunder, or any interest herein, without the written consent of Co-Equal Licensee. Any purported assignment, transfer or sublicense without Co-Equal Licensee's prior written consent shall be null and void. Notwithstanding the foregoing, Licensee may upon written notice to Licensors and the Co-Equal Licensee, assign this Agreement in connection with the transfer or sale of all or substantially all of its business, or in the event of Licensee's merger or consolidation or change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignors under this Agreement.

2.5 Except as provided in Section 6.3, Licensors shall have no right to make, have made, sell, offer to sell, import, or have imported, use, have used, sub-license, transfer or commercially exploit the Licensed Patent Rights anywhere in the world. The foregoing is not intended and shall not be construed to preclude Licensors from developing or commercializing Improvements, without infringing any Valid Claims and subject to the other restrictions set forth

in Section 2.6. Except as provided in Section 6.3, Licensors shall not grant any right, license or privilege to the Co-Equal Licensee unless such right, license or privilege is also offered to Licensee at the same time and on the same terms, and if accepted by Licensee, is granted to Licensee on the same terms as those granted to the Co-Equal Licensee.

2.6 Licensee and Licensors may independently develop Improvements; provided, that an Improvement may not infringe, misappropriate, or in any way use the confidential information or intellectual property rights or trade secrets of the other party or the Co-Equal Licensee. The party that develops and creates an Improvement, whether Licensee, Licensors or the Co-Equal Licensee, shall exclusively own the Improvement and all intellectual property rights therein, including but not limited to patents, copyrights, trademarks, trade secrets and other proprietary rights therein throughout the world. Neither Licensee nor Licensors has any obligation or duty to develop any Improvements.

2.7 Licensors agrees that, subject to Licensee's confidentiality obligations under Article VII, Licensors will not assert any claim against Licensee (or any of its subsidiaries, affiliates, distributors, Manufacturers or contractors) respecting their use of Confidential Information for the design, manufacture, use, import, offer for sale or sale of any Licensed Product within the Licensed Territory.

### **ARTICLE III OWNERSHIP**

3.1 Subject to this license (and the rights granted to the Co-Equal Licensee under the Co-Equal License), Licensee acknowledges and agrees that the Licensed Patent Rights are owned exclusively by Licensors. Licensee will co-operate in every reasonable way to acknowledge, confirm and protect such rights including the execution of written assignments and other documents that may from time to time be requested by Licensors.

3.2 Licensee shall pay all taxes, duties, tariffs, customs and other government charges levied on the production, sale, transportation, delivery, export or other use of Licensed Products, or in connection with the exercise of Licensee's rights under this Agreement, or respecting any payments made hereunder (other than taxes based on Licensors's income). Licensors will be promptly reimbursed for any such payments that were made by Licensors on Licensee's behalf.

3.3 Licensee agrees to indemnify, defend and hold Licensors harmless from and against any claims relating to Licensee's obligations under this Article III.

### **ARTICLE IV LIMITED WARRANTY AND INDEMNITY**

4.1 Each party represents and warrants to the other party and to the Co-Equal Licensee that: (a) it is free to enter into this Agreement; (b) in doing so, it will not violate any other agreement to which it is a party that would materially and adversely affect its ability to perform under this Agreement; (c) it has taken all corporate action necessary to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement; (d) this Agreement constitutes a valid and binding obligation of such party and is enforceable against it in accordance with its terms; and (e) it has not granted or purported to

grant any right, title, interest, lien or option to any person or entity, in or under the Licensed Patent Rights except as provided in Section 2.1, 2.3 and 4.2.

4.2 Licensors further represents and warrants that (i) concurrently with execution of this Agreement, it will grant a license identical to the license grant in Article II, and the terms and conditions under this Agreement, to the Co-Equal Licensee, and (ii) it has not granted and will not grant any other license that conflicts with the license grant set forth in Article II. **EXCEPT AS EXPRESSLY STATED IN SECTION 4.1 AND 4.2, NO OTHER WARRANTIES OR REPRESENTATIONS ARE GIVEN BY LICENSOR OR LICENSEE UNDER THIS AGREEMENT**, including but not limited to, any warranty or representation: (a) as to the scope or validity of the Licensed Patent Rights; (b) that any manufacture, importation, sale, offer to sell, lease, use, or other disposition of any product will be free from infringement of another party's intellectual property rights; (c) that Licensor will enforce any intellectual property rights it may have in the Licensed Patent Rights against third parties; (d) as to the quality, merchantability, or fitness for a particular purpose of any product; or (e) conferring by implication, estoppel, or otherwise any license or other right under any patents except the licenses and rights expressly granted hereunder.

4.3 Licensee shall defend, indemnify and hold harmless Licensor from and against any claims, liabilities, actions, costs or damages (including fees of attorneys and other professionals) arising from Licensor's prosecution, maintenance or enforcement of the Licensed Patent Rights under and in accordance with this Agreement. Licensee shall further defend, indemnify and hold harmless Licensor and the Co-Equal Licensee from and against any claims, liabilities, actions, costs or damages (including fees of attorneys and other professionals) arising from (i) the manufacture, use, sale, lease, licensing, promotion, offer to sell, distribution or other commercialization of Licensed Products by or on behalf of Licensee (including by any Manufacturer engaged by Licensee); and/or (ii) any other use by Licensee of the Licensed Patent Rights. The foregoing indemnification is conditioned upon Licensor giving Licensee prompt notice of any claim for which indemnification is sought, and providing Licensee with reasonable cooperation and assistance in connection with such claim (at Licensee's expense).

## **ARTICLE V PATENT PROSECUTION COSTS AND PAYMENTS**

5.1 In consideration of the license granted in Article II and other rights under this Agreement, Licensee shall pay 50% of all Patent Prosecution Costs and other fees and expenses incurred for maintaining the Licensed Patent Rights from September 8, 2000 and during the term of this Agreement including, but not limited to, the following:

- (a) 50% of Patent Prosecution Costs incurred during the Patent Prosecution in the U.S. and other foreign countries listed on Attachment "A;"
- (b) 50% of all USPTO maintenance fees and/or maintenance fees for other foreign agencies, for all issued patents included in the Licensed Patent Rights; and
- (c) 50% of all attorneys fees, filing fees and costs for any interference or equivalent proceeding involving Licensed Patent Rights under the pending Patent Application.

Licensee acknowledges that the remaining 50% of the Patent Prosecution Costs and other fees and expenses incurred for maintaining the Licensed Patent Rights shall be paid by the Co-Equal Licensee. Licensee and the Co-Equal Licensee shall enter directly into an agreement with the designated patent counsel on such counsel's standard form of engagement, obligating the Licensee to pay such fees directly to the designated patent counsel.

5.2 Licensors has no obligation to make, collect, or in any way administer payments to be made by Licensee under this Agreement. All amounts owed by Licensee will be timely paid by Licensee directly to patent counsel, the USPTO, or such other party to whom the payment is owed, in accordance with the terms established by the party to whom payment is owed. Licensee shall provide Licensors and Co-Equal Licensee with a copy of each payment at the time it is made. Licensee shall be solely responsible for payment of any and all interest charges, fines, late fees or other amounts of any kind that result from Licensee's failure to timely make any such payment, and Licensee agrees to indemnify, defend and hold Licensors and the Co-Equal Licensee harmless from and against any claims, liabilities, actions, costs or damages (including but not limited to all fees of attorneys and other professionals incurred defending claims, responding to inquiries regarding late payments, and collecting amounts owed from Licensee) that arise from Licensee's failure to timely make any payment under this Agreement.

5.3 Licensee will establish with patent counsel (in a separate account from the retainer to be established by the Co-Equal Licensee), to be applied as an advance against fees and disbursements made by patent counsel for Patent Prosecution Costs and other amounts due hereunder. The retainer will be established and maintained in an amount that may from time to time be reasonably required by patent counsel; provided, that patent counsel shall require the same amount of the Co-Equal Licensee:

5.4 Licensors shall cooperate with and supply all assistance reasonably requested by patent counsel in connection with the Patent Prosecution. Licensee shall pay Licensors for 50% of all of Licensors's time spent in his capacity as inventor or Licensors in assisting the prosecution, maintenance and enforcement of the Patent Application in the United States and foreign countries at the request of patent counsel on or after the Effective Date. Notwithstanding anything to the contrary herein or at law, Licensors is not required to provide any monetary or other assistance under this Agreement that is not subject to compensation in accordance with the foregoing. Licensors shall periodically invoice Licensee with details of amounts due by Licensee at a rate of \$250/hr plus out-of-pocket cost for travel, meals, lodging and other expenses reasonably incurred at the request of patent counsel, and all invoices shall be payable within thirty (30) days of receipt. The remaining 50% of Licensors's time spent in his capacity as inventor shall be paid by the Co-Equal Licensee. Any amounts not paid when due will earn interest at a rate of 1.5% per month from the date due (compounded daily). Licensors shall be entitled to disbursement in advance of amounts reasonably expected to cover out-of-pocket costs.

5.5 If Licensee disputes in good faith any amount due hereunder (including without limitation any amount due Licensors), Licensee shall (in addition to the retainer amount otherwise required in Section 5.3) place the disputed amount in an interest bearing trust account with patent counsel, pending resolution of the dispute pursuant to binding arbitration conducted in accordance with Section 12.2, to be drawn upon to promptly pay the disputed amount with

interest and/or returned to Licensee, as applicable, upon resolution of the dispute. The foregoing shall not apply if both Licensee and the Co-Equal Licensee dispute the amount due.

## ARTICLE VI

### PATENT PROSECUTION

6.1 The designated patent counsel shall represent Licensee and the Co-Equal Licensee under a tri-partite attorney-client relationship. As of the Effective Date, the law firm of Levin & Hawes LLP is designated as patent counsel to provide legal counseling regarding the Patent Prosecution. The parties may change patent counsel upon mutual written agreement between Licensee and Co-Equal Licensee.

(a) Licensee will designate a qualified representative who is reasonably knowledgeable in the patent process and inventions claimed in the Patent Application to be patent counsel's primary interface for day-to-day communications (it being acknowledged that the Co-Equal Licensee will also designate a representative for the same purpose). Licensee may at any time change its representative to patent counsel by providing written notice of the new representative to Licensors and the Co-Equal Licensee. The patent counsel shall promptly (and at or about the same time) provide Licensors and the designees of Licensee and the Co-Equal Licensee with copies of all correspondence from the USPTO or any other agency, domestic or foreign, or from foreign associates, regarding the Patent Prosecution (excluding for Licensee any country with respect to which the Licensee elects not to participate pursuant to Section 6.3).

(b) The patent counsel shall provide a copy of all proposed correspondence (including amendments) relating to the Patent Application and which materially and adversely affect the scope of the Valid Claims within the Licensed Territory, to Licensors and the designated representatives of Licensee and the Co-Equal Licensee. Such notice will be provided reasonably (at least fifteen (15) days if possible) before submitting any correspondence to the USPTO or any other patent office (with the understanding that revised drafts of the original correspondence will be provided as soon as they are available, which may be less than fifteen days). Licensee may review the proposed correspondence and/or have it reviewed by Licensee's own patent counsel; provided, that Licensee shall pay for its own attorneys' fees and costs; and, provided further that all such communication shall be subject to a written confidentiality agreement in form and substance approved by the designated patent counsel. Licensee may object to patent counsel in writing to the proposed correspondence within five (5) days of receipt of the correspondence. All proposed correspondence shall be deemed approved by Licensee if Licensee does not object in writing to the correspondence within such five (5) day period, and provide the basis therefore with a proposed alternative action. Such objection shall be provided to patent counsel, with a copy to the Co-Equal Licensee and the Licensors.

(c) If Licensee objects to the proposed correspondence during such five (5) day period as provided above, then patent counsel will make a recommendation as to an appropriate resolution of the objection, taking into consideration any objection submitted by the Co-Equal Licensee during such period. The failure by patent counsel to notify Licensee of its recommendation within ten (10) days following notice of objection will be deemed patent counsel's recommendation that no change to the proposed correspondence should be made. The

recommendation of patent counsel will be binding on Licensee and the Co-Equal Licensee unless and until overruled through arbitration conducted in accordance with Article XII; provided, that the failure by Licensee to provide notice of dispute under Section 12.2 within two (2) business days following (i) notice of patent counsel's recommendation will be deemed Licensee's waiver of its right to arbitrate such dispute, or (ii) the tenth day if patent counsel fails to deliver notice of its recommendation in such ten day period.

6.2 Licensee agrees that it will not bring any legal action or file any claim or complaint against Licensor, in the United States or any other jurisdiction, where such action, claim or complaint is based upon or related to any future act or omission of Licensor, failure to act in the future, or any future decision of Licensor, regarding the Patent Prosecution; provided, that the forgoing does not release Licensor for any failure to comply with the requirement of this Agreement. Licensee further agrees to sign any release that is reasonably requested by patent counsel in connection with retention of such counsel.

6.3 Patent Prosecution in foreign countries will be conducted as follows:

(a) Licensor has on or before the Effective Date filed patent applications based upon the Patent Application in the foreign countries listed in Attachment A. Licensee agrees that Licensor has no obligation or duty to file any other patent application(s) based upon the Patent Application, in any country, except at Licensee's cost pursuant to Section 6.3(b). Licensor shall not independently pursue patent rights based upon the Patent Application in any country.

(b) Licensee may instruct the designated patent counsel in writing to file patent application(s) in any particular country not listed in Attachment A, claiming priority to the Patent Application. Licensee shall provide a copy of such notice to the Licensor and the Co-Equal Licensee. Such filing, prosecution and all related Patent Prosecution Costs shall be at Licensee's sole cost and expense, unless the Co-Equal Licensee elects to participate in such filing. Licensor agrees to sign all documents required to make such filing and during the Patent Prosecution. If the Co-Equal Licensee decides to participate in such filing by providing written notice to Licensee within thirty (30) days of receipt of a copy of Licensee's notice, Licensee and the Co-Equal Licensee shall each pay fifty percent (50%) of all Patent Prosecution Costs related to such filings. If the Co-Equal Licensee does not elect to participate in such filings, the Co-Equal Licensee shall not have any right or license under any patent rights obtained in such country, unless the Co-Equal Licensee opts-in pursuant to Section 6.4 of this Agreement.

(c) Licensee will provide prompt written notice to Licensor and Co-Equal Licensee of any instruction by the Licensee to file patent application(s) based upon the Patent Application. Upon Licensee's receipt of such notice provided by the Co-Equal Licensee, Licensee shall have thirty (30) days within which to notify Licensor and the Co-Equal Licensee of its desire to participate or not participate in such filing. If Licensee elects to participate in such filing by providing notice within such thirty (30) days, Licensee and the Co-Equal Licensee shall each pay fifty percent (50%) of all Patent Prosecution Costs related to such filings. If Licensee does not elect to participate, and the Co-Equal Licensee proceeds with such filing, the Licensee shall not have any right or license under any rights obtained by the Co-Equal Licensee in such country, unless Licensee opts-in pursuant to Section 6.4 of this Agreement.

(d) Provided that Licensee has elected to participate in filing a patent application according to this Section 6.3, such patent application shall be included in the Licensed Patent Rights and the country in which the application was filed will be automatically included in the Licensed Territory, for purposes of the license granted hereunder to Licensee. (For example, if Licensee elects not to participate, then the Co-Equal Licensee will enjoy an exclusive license in such territory, and Licensee shall not have any further enforcement or other rights respecting the Licensed Patent Rights in such territory, except as provided in Section 6.4.)

6.4 Notwithstanding Licensee's election not to participate in any Patent Prosecution activity for a foreign territory under Section 6.3 of this Agreement within thirty (30) days following the other party's notice under Section 6.3(b), Licensee shall have the Option, exercisable by giving written notice to Licensor and the Co-Equal Licensee within One Hundred Twenty (120) days of issuance of the applicable patent in such territory, to opt-in the Patent Prosecution activity under Section 6.3, by paying the Co-Equal Licensee two hundred and fifty percent (250%) of the aggregate Patent Prosecution Cost incurred in such territory through the date of the opt-in notice, plus 50% of the Patent Prosecution Costs incurred thereafter. Upon payment of such amount the applicable patent rights in such territory shall be included in the Licensed Patent Rights.

## ARTICLE VII CONFIDENTIALITY

Each party agrees that (i) that it will not disclose to any third party any Confidential Information except as instructed by patent counsel or otherwise expressly permitted in this Agreement, and (ii) it will take all reasonable measures to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Any employee or agent given access to any Confidential Information must have a legitimate "need to know" and shall be similarly bound to keep such information confidential. Either party may disclose Confidential Information to the extent required by a court of competent jurisdiction or other governmental authority, or otherwise as required by law; provided, that prompt written notice of such requirement is given to the other party and the Co-Equal Licensee, and the disclosing party shall employ reasonable efforts to obtain a protective order and take such other action to limit such disclosure. The parties agree that status of prosecution of the Patent Application and all related office actions and information shall be deemed Confidential Information, except to the extent that it becomes generally available to the public without breach of this Agreement. In addition to any other remedies available to it at law or in equity, either party or the Co-Equal Licensee will be entitled to injunctive relief (without the requirement of posting a bond or other form of security) to enforce the provisions of this Article VII.

## ARTICLE VIII PATENT NOTICES

After patent rights are obtained, Licensee shall include on or with each Licensed Product a conspicuous notice to the effect that: "This product is made and sold under U.S. Patent No. \_\_\_\_\_, granted on \_\_\_\_\_, licensed by eVU Technologies, Inc."



## ARTICLE IX ENFORCEMENT AGAINST THIRD PARTY

9.1 Licensee and the Co-Equal Licensee shall each have the right, but not the obligation, to protect the Licensed Patent Rights from infringement, and prosecute infringers, in accordance with the provisions of this Section 9.

9.2 Licensee shall inform Licensors and the Co-Equal Licensee in writing, at least fifteen (15) days (or such shorter period that is reasonable under the circumstances) prior to instituting any infringement action against infringer(s) or potential infringer(s). Licensee shall pay the expenses of, and shall have sole control over such action, unless the Co-Equal Licensee elects in writing within six (6) months of the action being filed to join such action, in which event the expenses and control shall be shared (in a manner to be mutually agreed but substantially in accordance with the control and cost sharing provisions of Section 6.3).

9.3 If the Co-Equal Licensee elects within such period to join the action against the infringer or potential infringer, the Co-Equal Licensee shall immediately pay fifty percent (50%) of all fees and costs already incurred by Licensee in connection with such action, plus fifty percent (50%) of the fees and costs thereafter incurred in connection with such action. The Co-Equal Licensee and Licensee will equally pay or divide between themselves, any judgement, settlement amounts or damages that are awarded or become due in connection with such action.

9.4 If any action alleging invalidity, unenforceability or noninfringement of any of the Licensed Patent Rights is brought against Licensors, the Licensee and Co-Equal Licensee shall join the proceeding and share control and expenses. If any such action is brought against the Co-Equal Licensee, Licensee may elect to join such proceeding and share control and expenses with the Co-Equal Licensee. If any such action is brought against the Licensee, and, Licensee has sole control of such action, it shall bear all the costs and expenses involved in the action, including but not limited to attorneys' fees; provided, that the Co-Equal Licensee may elect to have joint control of the action with the Licensee, in which event the Co-Equal Licensee and the Licensee will share the costs and attorneys fees.

9.5 Licensors shall cooperate with and supply all assistance reasonably requested by patent counsel in accordance with any action instituted under this Section 9. Licensee shall pay Licensors for all of Licensors' time and out-of-pocket expenses incurred in connection with the foregoing if Licensee has primary control of the proceeding, or fifty percent (50%) of Licensors' time if the Co-Equal Licensee has joined Licensee in the proceeding, at the rate and in accordance with the terms of Section 5.4.

9.6 Licensee shall have the right to settle an action controlled by Licensee pursuant to this Article IX, provided that any settlement that by its terms declares any of the Valid Claims invalid or limits the scope of any of the Licensed Patent Rights, must be approved by the Co-Equal Licensee, which approval will not be unreasonably withheld. Should Licensee elect to abandon such an action other than pursuant to a settlement that is reasonably acceptable to the Co-Equal Licensee, Licensee shall give timely notice to the Co-Equal Licensee who, if it so desires, may continue the action; provided, however, that the sharing of expenses and any recovery in such suit shall in that instance be as initially agreed upon between the parties.

9.7 Any amounts paid by third parties as a result of actions brought under this Article IX (such as in satisfaction of a judgment or pursuant to a settlement) shall be paid to Licensor, Licensee and the Co-Equal Licensee in proportion to their respective contributions to payment of the cost of such actions.

## ARTICLE X TERM AND TERMINATION

10.1 This Agreement (and the license granted to Licensee herein) will commence on the Effective Date and expire on the last to expire of any Valid Claims included in the Licensed Patent Rights, unless terminated earlier in accordance with this Article X.

10.2 Licensor or the Co-Equal Licensee will each have the right to terminate this Agreement by providing written notice of termination to Licensee, if Licensee fails to make any payments as required in an order or ruling (or stipulation or settlement involving Licensee) during or in connection with any arbitration under Section 12.2. Licensee hereby acknowledges and agrees that the Co-Equal Licensee is an intended third party beneficiary of Licensee's payment obligations under this Agreement, and that the Co-Equal Licensee shall have the right to enforce such obligations and participate in binding arbitration under this Agreement.

10.3 In the event this Agreement is terminated for any reason, the rights and licenses granted to Licensee hereunder shall terminate, and Licensee shall cease immediately making, having made, licensing and distributing the Licensed Products. The provisions of Article I, Section 2.6 and 2.7, Article III - V, VII - VIII, and X - XII and any liability arising from breach of this Agreement will survive its termination.

## ARTICLE XI LIMITATION OF LIABILITY

11.1 Disclaimer of Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR DAMAGES TO THE OTHER PARTY'S BUSINESS REPUTATION HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE), INDEMNIFICATION OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

11.2 Limitation of Liability. IN NO EVENT WILL LICENSEE BE LIABLE TO THE LICENSOR UNDER ANY THEORY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ANY CLAIM ARISING OUT OF, OR RELATING TO, ANY ACTION THAT SUCH PARTY TAKES WITH RESPECT TO THE PROSECUTION, MAINTENANCE OR ENFORCEMENT OF THE PATENT APPLICATION OR LICENSED PATENT RIGHTS.

## ARTICLE XII GENERAL

12.1 No waiver by any party, express or implied, of any breach of any term, condition, or obligation of this Agreement by Licensee shall be construed as a waiver of any subsequent breach of that term, condition or obligation, or of any other term, condition, or obligation of this Agreement of the same or different nature.

12.2 In the event any dispute(s) regarding this Agreement cannot be resolved by the parties, the dispute(s) shall be resolved through binding arbitration conducted in Orange County, California, and the parties agree that the decision of the arbitrator shall be binding upon the parties. Each of the Licensee and the Co-Equal Licensee may appoint an arbitrator within ten (10) days after notice of the dispute by the other party, who then will appoint a third arbitrator who will act as the sole arbitrator for the dispute. If either the Licensee or Co-Equal Licensee fail to select an arbitrator within such ten (10) day period, the arbitrator timely selected by the other party will act as the sole arbitrator for such dispute. In any case, the sole arbitrator shall have experience and expertise in dispute resolution involving technology licenses and agreements. Judgement to enforce any arbitration decision may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, nothing contained herein is intended or shall be construed to prevent either party from seeking injunctive or other equitable relief in any court.

12.3 This Agreement shall be construed under the laws of the State of California and the United States of America as though entered into between parties residing in California to be performed wholly within California. The sole jurisdiction and venue for actions related to the subject matter hereof and brought in accordance with Section 12.2 above, shall be the California State and U.S. Federal Courts located in the County of Orange, California. Both parties consent to the jurisdiction of such courts and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by California or U.S. federal law. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' and expert witness fees incurred in connection therewith.

12.4 This Agreement may be executed in two or more counterparts each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. A facsimile signature shall be deemed an original for purposes of establishing execution of this Agreement.

12.5 No press release, advertising, promotional sales literature, or other promotional oral or written statements to the public in connection with or alluding to the relationship between the parties created by this Agreement, shall be made by either party without the prior written approval of the other party, except for restatements of previously-approved statements and disclosures required by applicable law or regulation.

12.6 For the purposes of this Agreement, each party is an independent contractor and not an agent or employee of the other party. Neither party shall have authority to make any statements, representations, or commitments of any kind, or to take any action which shall be

binding on the other party, except as may be explicitly provided for herein or authorized in writing. The Co-Equal Licensee is an intended third party beneficiary of this Agreement.

12.7 No party will be responsible for delays resulting from acts beyond the control of such party (other than failure to pay money when due), provided, that the non-performing party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance hereunder with reasonable dispatch whenever such causes are removed.

12.8 All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given upon the date of receipt if delivered by hand, recognized national overnight courier, confirmed facsimile transmission, or registered or certified mail, return receipt requested, postage prepaid, to the following addresses or facsimile numbers:

For Licensor:  
26072 Merit Circle, Suite 112  
Laguna Hills, CA 92653  
Facsimile: (949) 582-7554

For Licensee:  
26072 Merit Circle, Suite 112  
Laguna Hills, CA 92653  
Facsimile: (949) 582-7554

Either party may change its designated address and facsimile number by notice to the other party in the manner provided in this Section 12.8.

12.9 Licensee shall be responsible for ensuring compliance with all laws and regulations of the United States government relating to the export of Licensed Products from the United States, as well as complying with the laws and regulations of any other country.

12.10 If any section of this Agreement is found by competent authority to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such section in every other respect and the remainder of this Agreement shall continue in effect so long as the Agreement still expresses the intent of the parties.

12.11 The headings of sections are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

12.12 This Agreement shall be interpreted in English only. If the Agreement is translated to another language, the English interpretation shall supercede any conflicting interpretation in any other language.

12.13 This Agreement sets forth the entire understanding between the parties and supersedes all prior discussions, representations and agreements between them as to the subject matter of this Agreement. This Agreement cannot be modified except in writing signed by duly authorized representatives of both parties.

IN WITNESS THEREOF, the parties have executed this Agreement.

**LICENSOR:**

**THOMAS C. AMON**

**LICENSEE:**

**EVU TECHNOLOGIES, INC.**

Date:

3/19/2001

By:

Title:

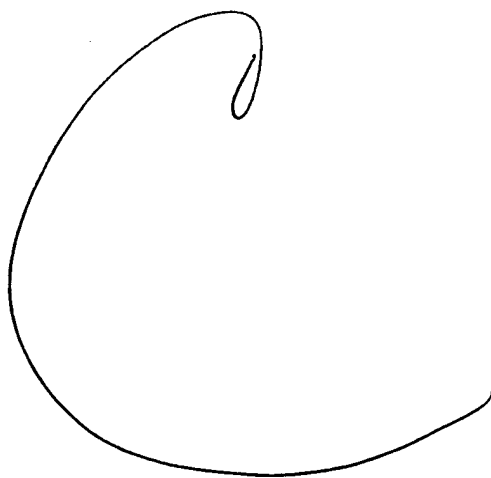
Date:

3/16/2001

**ATTACHMENT A**

**Licensed Territory**

[to be provided]



## Co-Equal License Agreement

This Co-Equal License Agreement ("Agreement") is entered into by and between Thomas Amon ("Licensor"), an individual, and SpeedVu.com, Inc., a California corporation, having a place of business at 24 Corporate Plaza, Suite 170, Newport Beach, California 92660 (hereinafter, "Licensee"), effective as of September 8, 2000 (hereinafter the "Effective Date").

WHEREAS, Licensor has created, developed or invented or was assigned the subject matter of a patent application described below;

WHEREAS, Licensor will also concurrently grant, on even date herewith, a Co-Equal license identical to the terms and conditions herein to eVU Technologies, Inc., a California corporation, located at 26072 Merit Circle, Suite 112, Laguna Hills, California 92653 ("Co-Equal Licensee"); and

WHEREAS, Licensee desires to obtain a license to Licensed Patent Rights (as described below) and Licensor is willing to grant such license on the terms and conditions set forth below.

NOW THEREFORE, in view of the above recitals and the following mutual covenants and promises, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

Capitalized Terms used and not otherwise defined herein shall have the meaning set forth below.

"Confidential Information" shall mean that information, data, methods, trade secrets, or inventions which is disclosed in the four corners of the Patent Application, except to the extent that that such information (i) enters the public domain without breach of this Agreement (including through issuance of a patent), (ii) is lawfully received from a third party without restriction on disclosure and without breach of a nondisclosure obligation, or (iii) was known by Licensee without restriction prior to receiving such information from Licensor.

"Improvements" shall mean any invention, development, discovery, device, improvement, derivative, know-how, technical information or other technology discovered, made, conceived and/or reduced to practice or otherwise acquired, possessed or controlled by either party, that is related to the Licensed Patent Rights.

"Licensed Patent Rights" shall mean all rights under all Valid Claims of the Patent Application. Licensed Patent Rights do not include any product, software or technology including but not limited to technical know-how, of either party (or of the Co-Equal Licensee), or any Improvements created by Licensor, Licensee or the Co-Equal Licensee.



**"Licensed Product"** shall mean any product made, used, sold, imported, licensed or distributed by Licensee, the manufacture, use, sale, offer to sell, export or import of which would constitute an infringement of any of the Licensed Patent Rights, but for this Agreement.

**"Licensed Territory"** shall mean the United States of America and the foreign countries listed in Attachment A (excluding those territories with respect to which Licensee has elected not to participate under Section 6.3).

**"Manufacturer"** means a party that manufactures and supplies Licensed Products to Licensee for resale by Licensee.

**"Patent Application"** shall mean Licensor's pending patent application, filed on August 11, 1997, in the United States Patent and Trademark Office ("USPTO"), Application Serial Number 08/912991 entitled AN IMPROVED APPARATUS AND METHOD FOR PROVIDER SELECTED MESSAGE IN RESPONSE TO A USER REQUEST FOR USER-SELECTED INFORMATION, and any continuation, re-examination, reissue or divisional application thereof, and any other patent application filed in the countries listed in Attachment A, claiming priority to the USPTO patent application. Patent Application does not include any continuation or continuation-in-part or other patent applications with respect to the portion of such applications that include Improvements.

**"Patent Prosecution"** shall mean the process of acquiring patent rights under the Patent Application.

**"Patent Prosecution Costs"** shall mean all fees, costs and expenses incurred by Licensee and the Co-Equal Licensee in connection with Patent Prosecution, including but not limited to issue and maintenance fees, attorney fees incurred in: (a) in responding to USPTO and other foreign patent offices and/or agencies correspondence, (b) responding to objections and/or rejections to any content of the Patent Application during the Patent Prosecution, and/or (c) for appealing any USPTO and/or other agency's decisions, either within the USPTO or any other appropriate judicial venues.

**"Valid Claims"** shall mean (a) issued claims of an issued patent that has not (i) expired or been cancelled; (ii) been declared invalid by unreversed and unappealable decision of a court or other appropriate body of competent jurisdiction, (iii) been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise; (iv) been abandoned in accordance with or as permitted by the terms of this Agreement or by mutual Agreement; or (b) claims in the Patent Application that are being actively prosecuted according to this Agreement and which have not been (i) cancelled, (ii) withdrawn from consideration, (iii) finally determined to be unallowable by the applicable government authority (and from which no appeal is or can be taken), and/or (iv) abandoned in accordance with or as permitted by the terms of this Agreement or by mutual written consent.

## ARTICLE II LICENSE GRANT AND COVENANTS

### 2. LICENSE.

2.1 Licensor hereby grants to Licensee, under the Licensed Patent Rights, within the Licensed Territory, a perpetual, irrevocable except as provided in Article X, non-transferable, royalty-free, co-exclusive license, with the right to make, have made, use, develop, make improvements to, import, have imported, offer to sell, sell, lease or otherwise commercialize Licensed Products. As used herein, "co-exclusive" means that the license rights granted herein are exclusive to Licensee and Co-Equal Licensee.

2.2 Except as expressly stated in this Agreement, no other rights, immunity or licenses are granted to Licensee under this Agreement, either expressly, or by implication, estoppel or otherwise. Should other rights arise that were not expressly granted by Licensor, then Licensee, Licensor and the Co-Equal Licensee will meet to discuss a grant of such rights. Licensee shall have no rights in or under any patents issued from a continuation, continuation-in-part, or divisional patent application(s) with respect to the portion of such applications that are based upon or include claims to Improvements created by Licensor or the Co-Equal Licensee.

2.3 Licensee shall have the right, subject to the terms of this Section 2.3, to sublicense the rights granted in Section 2.1: (i) to end users of Licensed Product for their internal use only, (ii) to Manufacturers, resellers, value added resellers, or original equipment manufacturers, or other distributors of Licensed Product, to manufacture, supply, distribute, or sell Licensed Product for Licensee, under the terms and conditions of this Agreement; and (iii) to third parties engaged by Licensee to collaborate in the development of Licensed Product; provided, that Licensee is the exclusive owner of such Licensed Product. Licensee agrees that the effectiveness of any sublicense is conditioned upon execution by the sublicensee of a written sublicense agreement containing provisions at least as favorable to Licensor as those in Sections 3, 4.3, and 7 of this Agreement. All such sublicenses shall terminate upon any termination of this Agreement (except as provided in Section 10.3) and shall include a provision to that effect.

2.4 Except as expressly permitted herein, Licensee shall not assign, transfer or sublicense (by contract, operation of law or otherwise), this Agreement or any right or obligation hereunder, or any interest herein, without the written consent of Co-Equal Licensee. Any purported assignment, transfer or sublicense without Co-Equal Licensee's prior written consent shall be null and void. Notwithstanding the foregoing, Licensee may upon written notice to Licensor and the Co-Equal Licensee, assign this Agreement in connection with the transfer or sale of all or substantially all of its business, or in the event of Licensee's merger or consolidation or change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignors under this Agreement.

2.5 Except as provided in Section 6.3, Licensor shall have no right to make, have made, sell, offer to sell, import, or have imported, use, have used, sub-license, transfer or commercially exploit the Licensed Patent Rights anywhere in the world. The foregoing is not intended and shall not be construed to preclude Licensor from developing or commercializing Improvements, without infringing any Valid Claims and subject to the other restrictions set forth

in Section 2.6. Except as provided in Section 6.3, Licensor shall not grant any right, license or privilege to the Co-Equal Licensee unless such right, license or privilege is also offered to Licensee at the same time and on the same terms, and if accepted by Licensee, is granted to Licensee on the same terms as those granted to the Co-Equal Licensee.

2.6 Licensee and Licensor may independently develop Improvements; provided, that an Improvement may not infringe, misappropriate, or in any way use the confidential information or intellectual property rights or trade secrets of the other party or the Co-Equal Licensee. The party that develops and creates an Improvement, whether Licensee, Licensor or the Co-Equal Licensee, shall exclusively own the Improvement and all intellectual property rights therein, including but not limited to patents, copyrights, trademarks, trade secrets and other proprietary rights therein throughout the world. Neither Licensee nor Licensor has any obligation or duty to develop any Improvements.

2.7 Licensor agrees that, subject to Licensee's confidentiality obligations under Article VII, Licensor will not assert any claim against Licensee (or any of its subsidiaries, affiliates, distributors, Manufacturers or contractors) respecting their use of Confidential Information for the design, manufacture, use, import, offer for sale or sale of any Licensed Product within the Licensed Territory.

### ARTICLE III OWNERSHIP

3.1 Subject to this license (and the rights granted to the Co-Equal Licensee under the Co-Equal License), Licensee acknowledges and agrees that the Licensed Patent Rights are owned exclusively by Licensor. Licensee will co-operate in every reasonable way to acknowledge, confirm and protect such rights including the execution of written assignments and other documents that may from time to time be requested by Licensor.

3.2 Licensee shall pay all taxes, duties, tariffs, customs and other government charges levied on the production, sale, transportation, delivery, export or other use of Licensed Products, or in connection with the exercise of Licensee's rights under this Agreement, or respecting any payments made hereunder (other than taxes based on Licensor's income). Licensor will be promptly reimbursed for any such payments that were made by Licensor on Licensee's behalf.

3.3 Licensee agrees to indemnify, defend and hold Licensor harmless from and against any claims relating to Licensee's obligations under this Article III.

### ARTICLE IV LIMITED WARRANTY AND INDEMNITY

4.1 Each party represents and warrants to the other party and to the Co-Equal Licensee that: (a) it is free to enter into this Agreement; (b) in doing so, it will not violate any other agreement to which it is a party that would materially and adversely affect its ability to perform under this Agreement; (c) it has taken all corporate action necessary to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement; (d) this Agreement constitutes a valid and binding obligation of such party and is enforceable against it in accordance with its terms; and (e) it has not granted or purported to

grant any right, title, interest, lien or option to any person or entity, in or under the Licensed Patent Rights except as provided in Section 2.1, 2.3 and 4.2.

4.2 Licensors further represents and warrants that (i) concurrently with execution of this Agreement, it will grant a license identical to the license grant in Article II, and the terms and conditions under this Agreement, to the Co-Equal Licensee, and (ii) it has not granted and will not grant any other license that conflicts with the license grant set forth in Article II. EXCEPT AS EXPRESSLY STATED IN SECTION 4.1 AND 4.2, NO OTHER WARRANTIES OR REPRESENTATIONS ARE GIVEN BY LICENSOR OR LICENSEE UNDER THIS AGREEMENT, including but not limited to, any warranty or representation: (a) as to the scope or validity of the Licensed Patent Rights; (b) that any manufacture, importation, sale, offer to sell, lease, use, or other disposition of any product will be free from infringement of another party's intellectual property rights; (c) that Licensor will enforce any intellectual property rights it may have in the Licensed Patent Rights against third parties; (d) as to the quality, merchantability, or fitness for a particular purpose of any product; or (e) conferring by implication, estoppel, or otherwise any license or other right under any patents except the licenses and rights expressly granted hereunder.

4.3 Licensee shall defend, indemnify and hold harmless Licensor from and against any claims, liabilities, actions, costs or damages (including fees of attorneys and other professionals) arising from Licensor's prosecution, maintenance or enforcement of the Licensed Patent Rights under and in accordance with this Agreement. Licensee shall further defend, indemnify and hold harmless Licensor and the Co-Equal Licensee from and against any claims, liabilities, actions, costs or damages (including fees of attorneys and other professionals) arising from (i) the manufacture, use, sale, lease, licensing, promotion, offer to sell, distribution or other commercialization of Licensed Products by or on behalf of Licensee (including by any Manufacturer engaged by Licensee); and/or (ii) any other use by Licensee of the Licensed Patent Rights. The foregoing indemnification is conditioned upon Licensor giving Licensee prompt notice of any claim for which indemnification is sought, and providing Licensee with reasonable cooperation and assistance in connection with such claim (at Licensee's expense).

## ARTICLE V PATENT PROSECUTION COSTS AND PAYMENTS

5.1 In consideration of the license granted in Article II and other rights under this Agreement, Licensee shall pay 50% of all Patent Prosecution Costs and other fees and expenses incurred for maintaining the Licensed Patent Rights from September 8, 2000 and during the term of this Agreement including, but not limited to, the following:

(a) 50% of Patent Prosecution Costs incurred during the Patent Prosecution in the U.S. and other foreign countries listed on Attachment "A,"

(b) 50% of all USPTO maintenance fees and/or maintenance fees for other foreign agencies, for all issued patents included in the Licensed Patent Rights; and

(c) 50% of all attorneys fees, filing fees and costs for any interference or equivalent proceeding involving Licensed Patent Rights under the pending Patent Application.

Licensee acknowledges that the remaining 50% of the Patent Prosecution Costs and other fees and expenses incurred for maintaining the Licensed Patent Rights shall be paid by the Co-Equal Licensee. Licensee and the Co-Equal Licensee shall enter directly into an agreement with the designated patent counsel on such counsel's standard form of engagement, obligating the Licensee to pay such fees directly to the designated patent counsel.

5.2 Licensors has no obligation to make, collect, or in any way administer payments to be made by Licensee under this Agreement. All amounts owed by Licensee will be timely paid by Licensee directly to patent counsel, the USPTO, or such other party to whom the payment is owed, in accordance with the terms established by the party to whom payment is owed. Licensee shall provide Licensors and Co-Equal Licensee with a copy of each payment at the time it is made. Licensee shall be solely responsible for payment of any and all interest charges, fines, late fees or other amounts of any kind that result from Licensee's failure to timely make any such payment, and Licensee agrees to indemnify, defend and hold Licensors and the Co-Equal Licensee harmless from and against any claims, liabilities, actions, costs or damages (including but not limited to all fees of attorneys and other professionals incurred defending claims, responding to inquiries regarding late payments, and collecting amounts owed from Licensee) that arise from Licensee's failure to timely make any payment under this Agreement.

5.3 Licensee will establish with patent counsel (in a separate account from the retainer to be established by the Co-Equal Licensee), to be applied as an advance against fees and disbursements made by patent counsel for Patent Prosecution Costs and other amounts due hereunder. The retainer will be established and maintained in an amount that may from time to time be reasonably required by patent counsel; provided, that patent counsel shall require the same amount of the Co-Equal Licensee.

5.4 Licensors shall cooperate with and supply all assistance reasonably requested by patent counsel in connection with the Patent Prosecution. Licensee shall pay Licensors for 50% of all of Licensors's time spent in his capacity as inventor or Licensors in assisting the prosecution, maintenance and enforcement of the Patent Application in the United States and foreign countries at the request of patent counsel on or after the Effective Date. Notwithstanding anything to the contrary herein or at law, Licensors is not required to provide any monetary or other assistance under this Agreement that is not subject to compensation in accordance with the foregoing. Licensors shall periodically invoice Licensee with details of amounts due by Licensee at a rate of \$250/hr plus out-of-pocket cost for travel, meals, lodging and other expenses reasonably incurred at the request of patent counsel, and all invoices shall be payable within thirty (30) days of receipt. The remaining 50% of Licensors's time spent in his capacity as inventor shall be paid by the Co-Equal Licensee. Any amounts not paid when due will earn interest at a rate of 1.5% per month from the date due (compounded daily). Licensors shall be entitled to disbursement in advance of amounts reasonably expected to cover out-of-pocket costs.

5.5 If Licensee disputes in good faith any amount due hereunder (including without limitation any amount due Licensors), Licensee shall (in addition to the retainer amount otherwise required in Section 5.3) place the disputed amount in an interest bearing trust account with patent counsel, pending resolution of the dispute pursuant to binding arbitration conducted in accordance with Section 12.2, to be drawn upon to promptly pay the disputed amount with

interest and/or returned to Licensee, as applicable, upon resolution of the dispute. The foregoing shall not apply if both Licensee and the Co-Equal Licensee dispute the amount due.

## ARTICLE VI

### PATENT PROSECUTION

6.1 The designated patent counsel shall represent Licensee and the Co-Equal Licensee under a tri-partite attorney-client relationship. As of the Effective Date, the law firm of Levin & Hawes LLP is designated as patent counsel to provide legal counseling regarding the Patent Prosecution. The parties may change patent counsel upon mutual written agreement between Licensee and Co-Equal Licensee.

(a) Licensee will designate a qualified representative who is reasonably knowledgeable in the patent process and inventions claimed in the Patent Application to be patent counsel's primary interface for day-to-day communications (it being acknowledged that the Co-Equal Licensee will also designate a representative for the same purpose). Licensee may at any time change its representative to patent counsel by providing written notice of the new representative to Licensors and the Co-Equal Licensee. The patent counsel shall promptly (and at or about the same time) provide Licensors and the designees of Licensee and the Co-Equal Licensee with copies of all correspondence from the USPTO or any other agency, domestic or foreign, or from foreign associates, regarding the Patent Prosecution (excluding for Licensee any country with respect to which the Licensee elects not to participate pursuant to Section 6.3).

(b) The patent counsel shall provide a copy of all proposed correspondence (including amendments) relating to the Patent Application and which materially and adversely affect the scope of the Valid Claims within the Licensed Territory, to Licensors and the designated representatives of Licensee and the Co-Equal Licensee. Such notice will be provided reasonably (at least fifteen (15) days if possible) before submitting any correspondence to the USPTO or any other patent office (with the understanding that revised drafts of the original correspondence will be provided as soon as they are available, which may be less than fifteen days). Licensee may review the proposed correspondence and/or have it reviewed by Licensee's own patent counsel; provided, that Licensee shall pay for its own attorneys' fees and costs; and, provided further that all such communication shall be subject to a written confidentiality agreement in form and substance approved by the designated patent counsel. Licensee may object to patent counsel in writing to the proposed correspondence within five (5) days of receipt of the correspondence. All proposed correspondence shall be deemed approved by Licensee if Licensee does not object in writing to the correspondence within such five (5) day period, and provide the basis therefore with a proposed alternative action. Such objection shall be provided to patent counsel, with a copy to the Co-Equal Licensee and the Licensors.

(c) If Licensee objects to the proposed correspondence during such five (5) day period as provided above, then patent counsel will make a recommendation as to an appropriate resolution of the objection, taking into consideration any objection submitted by the Co-Equal Licensee during such period. The failure by patent counsel to notify Licensee of its recommendation within ten (10) days following notice of objection will be deemed patent counsel's recommendation that no change to the proposed correspondence should be made. The

recommendation of patent counsel will be binding on Licensee and the Co-Equal Licensee unless and until overruled through arbitration conducted in accordance with Article XII; provided, that the failure by Licensee to provide notice of dispute under Section 12.2 within two (2) business days following (i) notice of patent counsel's recommendation will be deemed Licensee's waiver of its right to arbitrate such dispute, or (ii) the tenth day if patent counsel fails to deliver notice of its recommendation in such ten day period.

6.2 Licensee agrees that it will not bring any legal action or file any claim or complaint against Licensor, in the United States or any other jurisdiction, where such action, claim or complaint is based upon or related to any future act or omission of Licensor, failure to act in the future, or any future decision of Licensor, regarding the Patent Prosecution; provided, that the forgoing does not release Licensor for any failure to comply with the requirement of this Agreement. Licensee further agrees to sign any release that is reasonably requested by patent counsel in connection with retention of such counsel.

6.3 Patent Prosecution in foreign countries will be conducted as follows:

(a) Licensor has on or before the Effective Date filed patent applications based upon the Patent Application in the foreign countries listed in Attachment A. Licensee agrees that Licensor has no obligation or duty to file any other patent application(s) based upon the Patent Application, in any country, except at Licensee's cost pursuant to Section 6.3(b). Licensor shall not independently pursue patent rights based upon the Patent Application in any country.

(b) Licensee may instruct the designated patent counsel in writing to file patent application(s) in any particular country not listed in Attachment A, claiming priority to the Patent Application. Licensee shall provide a copy of such notice to the Licensor and the Co-Equal Licensee. Such filing, prosecution and all related Patent Prosecution Costs shall be at Licensee's sole cost and expense, unless the Co-Equal Licensee elects to participate in such filing. Licensor agrees to sign all documents required to make such filing and during the Patent Prosecution. If the Co-Equal Licensee decides to participate in such filing by providing written notice to Licensee within thirty (30) days of receipt of a copy of Licensee's notice, Licensee and the Co-Equal Licensee shall each pay fifty percent (50%) of all Patent Prosecution Costs related to such filings. If the Co-Equal Licensee does not elect to participate in such filings, the Co-Equal Licensee shall not have any right or license under any patent rights obtained in such country, unless the Co-Equal Licensee opts-in pursuant to Section 6.4 of this Agreement.

(c) Licensee will provide prompt written notice to Licensor and Co-Equal Licensee of any instruction by the Licensee to file patent application(s) based upon the Patent Application. Upon Licensee's receipt of such notice provided by the Co-Equal Licensee, Licensee shall have thirty (30) days within which to notify Licensor and the Co-Equal Licensee of its desire to participate or not participate in such filing. If Licensee elects to participate in such filing by providing notice within such thirty (30) days, Licensee and the Co-Equal Licensee shall each pay fifty percent (50%) of all Patent Prosecution Costs related to such filings. If Licensee does not elect to participate, and the Co-Equal Licensee proceeds with such filing, the Licensee shall not have any right or license under any rights obtained by the Co-Equal Licensee in such country, unless Licensee opts-in pursuant to Section 6.4 of this Agreement.

(d) Provided that Licensee has elected to participate in filing a patent application according to this Section 6.3, such patent application shall be included in the Licensed Patent Rights and the country in which the application was filed will be automatically included in the Licensed Territory, for purposes of the license granted hereunder to Licensee. (For example, if Licensee elects not to participate, then the Co-Equal Licensee will enjoy an exclusive license in such territory, and Licensee shall not have any further enforcement or other rights respecting the Licensed Patent Rights in such territory, except as provided in Section 6.4.)

6.4 Notwithstanding Licensee's election not to participate in any Patent Prosecution activity for a foreign territory under Section 6.3 of this Agreement within thirty (30) days following the other party's notice under Section 6.3(b), Licensee shall have the Option, exercisable by giving written notice to Licensor and the Co-Equal Licensee within One Hundred Twenty (120) days of issuance of the applicable patent in such territory, to opt-in the Patent Prosecution activity under Section 6.3, by paying the Co-Equal Licensee two hundred and fifty percent (250%) of the aggregate Patent Prosecution Cost incurred in such territory through the date of the opt-in notice, plus 50% of the Patent Prosecution Costs incurred thereafter. Upon payment of such amount the applicable patent rights in such territory shall be included in the Licensed Patent Rights.

## ARTICLE VII CONFIDENTIALITY

Each party agrees that (i) that it will not disclose to any third party any Confidential Information except as instructed by patent counsel or otherwise expressly permitted in this Agreement, and (ii) it will take all reasonable measures to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. Any employee or agent given access to any Confidential Information must have a legitimate "need to know" and shall be similarly bound to keep such information confidential. Either party may disclose Confidential Information to the extent required by a court of competent jurisdiction or other governmental authority, or otherwise as required by law; provided, that prompt written notice of such requirement is given to the other party and the Co-Equal Licensee, and the disclosing party shall employ reasonable efforts to obtain a protective order and take such other action to limit such disclosure. The parties agree that status of prosecution of the Patent Application and all related office actions and information shall be deemed Confidential Information, except to the extent that it becomes generally available to the public without breach of this Agreement. In addition to any other remedies available to it at law or in equity, either party or the Co-Equal Licensee will be entitled to injunctive relief (without the requirement of posting a bond or other form of security) to enforce the provisions of this Article VII.

## ARTICLE VIII PATENT NOTICES

After patent rights are obtained, Licensee shall include on or with each Licensed Product a conspicuous notice to the effect that: "This product is made and sold under U.S. Patent No. \_\_\_\_\_, granted on \_\_\_\_\_, licensed by SpeedVu.com, Inc."



## ARTICLE IX ENFORCEMENT AGAINST THIRD PARTY

9.1 Licensee and the Co-Equal Licensee shall each have the right, but not the obligation, to protect the Licensed Patent Rights from infringement, and prosecute infringers, in accordance with the provisions of this Section 9.

9.2 Licensee shall inform Licensor and the Co-Equal Licensee in writing, at least fifteen (15) days (or such shorter period that is reasonable under the circumstances) prior to instituting any infringement action against infringer(s) or potential infringer(s). Licensee shall pay the expenses of, and shall have sole control over such action, unless the Co-Equal Licensee elects in writing within six (6) months of the action being filed to join such action, in which event the expenses and control shall be shared (in a manner to be mutually agreed but substantially in accordance with the control and cost sharing provisions of Section 6.3).

9.3 If the Co-Equal Licensee elects within such period to join the action against the infringer or potential infringer, the Co-Equal Licensee shall immediately pay fifty percent (50%) of all fees and costs already incurred by Licensee in connection with such action, plus fifty percent (50%) of the fees and costs thereafter incurred in connection with such action. The Co-Equal Licensee and Licensee will equally pay or divide between themselves, any judgement, settlement amounts or damages that are awarded or become due in connection with such action.

9.4 If any action alleging invalidity, unenforceability or noninfringement of any of the Licensed Patent Rights is brought against Licensor, the Licensee and Co-Equal Licensee shall join the proceeding and share control and expenses. If any such action is brought against the Co-Equal Licensee, Licensee may elect to join such proceeding and share control and expenses with the Co-Equal Licensee. If any such action is brought against the Licensee, and, Licensee has sole control of such action, it shall bear all the costs and expenses involved in the action, including but not limited to attorneys' fees; provided, that the Co-Equal Licensee may elect to have joint control of the action with the Licensee, in which event the Co-Equal Licensee and the Licensee will share the costs and attorneys fees.

9.5 Licensor shall cooperate with and supply all assistance reasonably requested by patent counsel in accordance with any action instituted under this Section 9. Licensee shall pay Licensor for all of Licensor's time and out-of-pocket expenses incurred in connection with the foregoing if Licensee has primary control of the proceeding, or fifty percent (50%) of Licensor's time if the Co-Equal Licensee has joined Licensee in the proceeding, at the rate and in accordance with the terms of Section 5.4.

9.6 Licensee shall have the right to settle an action controlled by Licensee pursuant to this Article IX, provided that any settlement that by its terms declares any of the Valid Claims invalid or limits the scope of any of the Licensed Patent Rights, must be approved by the Co-Equal Licensee, which approval will not be unreasonably withheld. Should Licensee elect to abandon such an action other than pursuant to a settlement that is reasonably acceptable to the Co-Equal Licensee, Licensee shall give timely notice to the Co-Equal Licensee who, if it so desires, may continue the action; provided, however, that the sharing of expenses and any recovery in such suit shall in that instance be as initially agreed upon between the parties.

9.7 Any amounts paid by third parties as a result of actions brought under this Article IX (such as in satisfaction of a judgment or pursuant to a settlement) shall be paid to Licensor, Licensee and the Co-Equal Licensee in proportion to their respective contributions to payment of the cost of such actions.

## ARTICLE X TERM AND TERMINATION

10.1 This Agreement (and the license granted to Licensee herein) will commence on the Effective Date and expire on the last to expire of any Valid Claims included in the Licensed Patent Rights, unless terminated earlier in accordance with this Article X.

10.2 Licensor or the Co-Equal Licensee will each have the right to terminate this Agreement by providing written notice of termination to Licensee, if Licensee fails to make any payments as required in an order or ruling (or stipulation or settlement involving Licensee) during or in connection with any arbitration under Section 12.2. Licensee hereby acknowledges and agrees that the Co-Equal Licensee is an intended third party beneficiary of Licensee's payment obligations under this Agreement, and that the Co-Equal Licensee shall have the right to enforce such obligations and participate in binding arbitration under this Agreement.

10.3 In the event this Agreement is terminated for any reason, the rights and licenses granted to Licensee hereunder shall terminate, and Licensee shall cease immediately making, having made, licensing and distributing the Licensed Products. The provisions of Article I, Section 2.6 and 2.7, Article III - V, VII - VIII, and X - XII and any liability arising from breach of this Agreement will survive its termination.

## ARTICLE XI LIMITATION OF LIABILITY

11.1 Disclaimer of Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR DAMAGES TO THE OTHER PARTY'S BUSINESS REPUTATION HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE), INDEMNIFICATION OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

11.2 Limitation of Liability. IN NO EVENT WILL LICENSEE BE LIABLE TO THE LICENSOR UNDER ANY THEORY (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ANY CLAIM ARISING OUT OF, OR RELATING TO, ANY ACTION THAT SUCH PARTY TAKES WITH RESPECT TO THE PROSECUTION, MAINTENANCE OR ENFORCEMENT OF THE PATENT APPLICATION OR LICENSED PATENT RIGHTS.

## ARTICLE XII GENERAL

12.1 No waiver by any party, express or implied, of any breach of any term, condition, or obligation of this Agreement by Licensee shall be construed as a waiver of any subsequent breach of that term, condition or obligation, or of any other term, condition, or obligation of this Agreement of the same or different nature.

12.2 In the event any dispute(s) regarding this Agreement cannot be resolved by the parties, the dispute(s) shall be resolved through binding arbitration conducted in Orange County, California, and the parties agree that the decision of the arbitrator shall be binding upon the parties. Each of the Licensee and the Co-Equal Licensee may appoint an arbitrator within ten (10) days after notice of the dispute by the other party, who then will appoint a third arbitrator who will act as the sole arbitrator for the dispute. If either the Licensee or Co-Equal Licensee fail to select an arbitrator within such ten (10) day period, the arbitrator timely selected by the other party will act as the sole arbitrator for such dispute. In any case, the sole arbitrator shall have experience and expertise in dispute resolution involving technology licenses and agreements. Judgement to enforce any arbitration decision may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, nothing contained herein is intended or shall be construed to prevent either party from seeking injunctive or other equitable relief in any court.

12.3 This Agreement shall be construed under the laws of the State of California and the United States of America as though entered into between parties residing in California to be performed wholly within California. The sole jurisdiction and venue for actions related to the subject matter hereof and brought in accordance with Section 12.2 above, shall be the California State and U.S. Federal Courts located in the County of Orange, California. Both parties consent to the jurisdiction of such courts and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by California or U.S. federal law. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' and expert witness fees incurred in connection therewith.

12.4 This Agreement may be executed in two or more counterparts each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. A facsimile signature shall be deemed an original for purposes of establishing execution of this Agreement.

12.5 No press release, advertising, promotional sales literature, or other promotional oral or written statements to the public in connection with or alluding to the relationship between the parties created by this Agreement, shall be made by either party without the prior written approval of the other party, except for restatements of previously-approved statements and disclosures required by applicable law or regulation.

12.6 For the purposes of this Agreement, each party is an independent contractor and not an agent or employee of the other party. Neither party shall have authority to make any statements, representations, or commitments of any kind, or to take any action which shall be

binding on the other party, except as may be explicitly provided for herein or authorized in writing. The Co-Equal Licensee is an intended third party beneficiary of this Agreement.

12.7 No party will be responsible for delays resulting from acts beyond the control of such party (other than failure to pay money when due), provided, that the non-performing party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance hereunder with reasonable dispatch whenever such causes are removed.

12.8 All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given upon the date of receipt if delivered by hand, recognized national overnight courier, confirmed facsimile transmission, or registered or certified mail, return receipt requested, postage prepaid, to the following addresses or facsimile numbers:

For Licensors:  
26072 Merit Circle, Suite 112  
Laguna Hills, CA 92653  
Facsimile: (949) 582-7554

For Licensee:  
24 Corporate Plaza, Suite 170  
Newport Beach, CA 92660  
Facsimile: (949) 720-7248

Either party may change its designated address and facsimile number by notice to the other party in the manner provided in this Section 12.8.

12.9 Licensee shall be responsible for ensuring compliance with all laws and regulations of the United States government relating to the export of Licensed Products from the United States, as well as complying with the laws and regulations of any other country.

12.10 If any section of this Agreement is found by competent authority to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such section in every other respect and the remainder of this Agreement shall continue in effect so long as the Agreement still expresses the intent of the parties.

12.11 The headings of sections are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

12.12 This Agreement shall be interpreted in English only. If the Agreement is translated to another language, the English interpretation shall supercede any conflicting interpretation in any other language.

12.13 This Agreement sets forth the entire understanding between the parties and supersedes all prior discussions, representations and agreements between them as to the subject matter of this Agreement. This Agreement cannot be modified except in writing signed by duly authorized representatives of both parties.

IN WITNESS THEREOF, the parties have executed this Agreement.

LICENSOR:

THOMAS C. AMON



Date: 3 / 19 / 2001

LICENSEE:

SPEEDVU.COM, INC.

By: Eric P. Turner

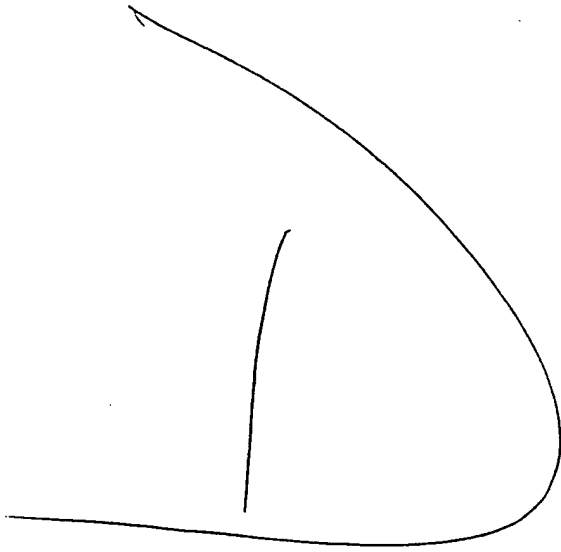
Title: President

Date: 3/16/01

## ATTACHMENT A

### Licensed Territory

Australia  
Austria  
Belgium  
Brazil  
Canada  
China  
Cyprus  
Denmark  
Finland  
France  
Germany  
Greece  
Ireland  
Italy  
Liechtenstein  
Luxembourg  
Monaco  
Netherlands  
Portugal  
Spain  
Sweden  
Switzerland  
United Kingdom<sub>7</sub>



## GENERAL ASSIGNMENT

THIS ASSIGNMENT, made this 3rd day of December, 2001 between eVU Technology, Inc. (hereinafter referred to as "ASSIGNOR") and DAVID R. HABERBUSH (hereinafter referred to as "ASSIGNEE").

ASSIGNOR is indebted to diverse persons and is desirous of providing payment to the same, so far as in its power, by an assignment of all property for that purpose.

NOW, THEREFORE, ASSIGNOR, for a valuable consideration, receipt of which is hereby acknowledged, does hereby make the following General Assignment for the benefit of ASSIGNOR'S creditors to ASSIGNEE, under the following terms and conditions:

### I. ASSIGNMENT OF PROPERTY

1.1 ASSIGNOR does hereby grant, bargain, sell, assign, and transfer to ASSIGNEE, his successors and assigns, in trust for the ultimate benefit of ASSIGNOR'S creditors generally, all of the property and assets of the ASSIGNOR of every kind and nature and wheresoever situated, whether in possession, reversion, remainder, or expectancy, both real and personal, and any interest or equity therein not exempt from execution; included therein are all merchandise, furniture, fixtures, machinery, equipment, raw materials, merchandise in process, book accounts, books, accounts receivable, cash on hand, all choses in action (personal or otherwise), insurance policies, and all other property of every kind and nature owned by the ASSIGNOR, and without limiting the generality of the foregoing, including all of the assets pertaining to that certain tank service and manufacturing company known as 5031 Birch Street, Suite F, New Port Beach, California.

1.2 This Assignment constitutes a grant deed to all real property owned by ASSIGNOR, whether or not said real property is specifically described herein.

1.3 ASSIGNOR agrees to deliver to ASSIGNEE all books of account and records, to execute and deliver all additional necessary documents immediately upon request by ASSIGNEE, and to endorse all indicia of ownership where required by ASSIGNEE, in order to complete the transfer of all assets to ASSIGNEE as intended by this General Assignment including, but not limited to, all of ASSIGNOR'S real and personal property and/or ASSIGNOR'S interest therein, including mortgages, deeds of trust, motor vehicles and patent rights. ASSIGNEE is hereby authorized to execute all endorsements and demands requiring ASSIGNOR'S signature, in the name of ASSIGNOR. ASSIGNOR further authorizes ASSIGNEE to apply for any deposits, refunds (including specifically, among all others, claims for refund of taxes paid) or claims wherever necessary, in the name of ASSIGNOR. ASSIGNEE is authorized to direct all ASSIGNOR'S United States mail to be delivered to ASSIGNEE, and ASSIGNEE is expressly authorized and directed to open said mail as agent of ASSIGNOR; and to do any thing or act which the ASSIGNEE in his sole and arbitrary discretion deems necessary or advisable to effectuate the purposes of this General Assignment.

1.4 ASSIGNOR and ASSIGNEE agree to the following:

1.4.1 This instrument transfers legal title and possession to ASSIGNEE of all of said herein above described assets and, ASSIGNEE, in his own discretion, may determine whether to continue all, or part, of ASSIGNOR'S operations, or to liquidate said assets; if ASSIGNEE deems it advisable he may operate the business, except that it is the intent of the parties that such operation shall be limited in duration, and shall be solely for the benefit of creditors.



1.4.2 ASSIGNEE, at his discretion, may sell and/or dispose of ASSIGNOR'S assets upon such terms and conditions as he may deem fit, at public or private sale, provided, however, that ASSIGNEE shall use his best efforts to maximize the proceeds from the sale and disposition of said assets; ASSIGNEE shall not be personally liable in any manner, and ASSIGNEE's obligations shall be in his representative capacity, only, as an ASSIGNEE for the general benefit of ASSIGNOR'S creditors. Said ASSIGNEE shall administer this estate to the best of his ability but it is expressly understood that he, his agents, servants or employees shall be liable only for reasonable care and diligence in the administration, and he shall not be liable for any act or thing done by him, his agents, servants, or employees in good faith in connection herewith.

## II. POWERS OF THE ASSIGNEE

2. Except as otherwise allowed or limited by statutes, ASSIGNEE shall have the following powers:

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2.1. From all funds received from proceeds of sales, collections sums due, operation of ASSIGNOR'S business, and all other sources hereinafter "Proceeds") ASSIGNEE shall pay himself reasonable remuneration and a fee for all services he provides as ASSIGNEE hereunder in a sum not to exceed 10% of the gross proceeds of the sale of ASSIGNOR'S ASSETS. ASSIGNEE shall also reimburse or pay himself for all charges and expenses incurred by him in the discharge of his duties hereunder including, but not limited to, postage, rent, photocopies, messenger, overnight mail, lock changes, bank charges, bookkeeping, bond premiums, and insurance. In addition ASSIGNEE agrees to serve as his own attorney for all non-litigation matters of this General Assignment, except those matters requiring legal assistance for which the ASSIGNEE does not, in his sole judgement and discretion, believe he has adequate experience or qualifications or which ASSIGNEE believes, in his sole judgement and discretion, may be provided more economically by another lawyer or law firm, including former attorneys for ASSIGNOR. All of the aforementioned amounts are to be determined at the ASSIGNEE'S sole discretion and judgment.

2.2. ASSIGNEE may also pay from the Proceeds:

2.2.1. Remuneration to his agents, consultants, and employees and reasonable fees and expenses to accountants and attorneys (as limited by paragraph 2.1 above).

2.2.2. The costs and expenses incurred by any creditor who may have levied an attachment or other lien on assets of ASSIGNOR.

2.2.3. All of the aforementioned amounts are to be determined at the ASSIGNEE'S sole discretion and judgment.

2.3. ASSIGNEE may employ one or more agents, consultants, employees, accountants and/or attorneys (as limited by paragraph 2.1 above). ASSIGNEE may employ any such agents, consultants, employees, accountants and/or attorneys. ASSIGNEE may employ such agents, consultants, employees, accountants and/or attorneys as ASSIGNEE determines are necessary in his sole discretion and judgment.

2.4. ASSIGNEE may compromise claims, complete or reject ASSIGNOR'S executory contracts, discharge at his option any liens on said assets and any indebtedness which under law is entitled to priority of payment; ASSIGNEE shall have the power to borrow money, hypothecate and pledge the assets, and to do all matters and things that said ASSIGNOR could have done prior to this General Assignment. Any act or thing done by ASSIGNEE hereunder shall bind the assignment estate and the ASSIGNEE only in his capacity as ASSIGNEE for the benefit of creditors. ASSIGNEE shall have the right to sue as the successor of the ASSIGNOR, or ASSIGNEE is hereby given the right and power to institute and prosecute legal proceedings in the name of the ASSIGNOR, the same as if the ASSIGNOR had himself instituted and prosecuted such proceedings or actions;

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ASSIGNEE is hereby authorized and has the right to defend all actions instituted against the ASSIGNOR, and to appear on behalf of the ASSIGNOR in all proceedings (legal or otherwise) in which ASSIGNOR is a party. ASSIGNOR does hereby appoint ASSIGNEE as the ASSIGNOR'S attorney in fact with full power to act for and in place of the ASSIGNOR in such actions or proceedings or in any other matters; including the right to verify all pleadings or other documents on behalf of ASSIGNOR.

2.5 ASSIGNEE agrees (provided any such claim may, by operation of law be non-assignable), to make any and all claims for refund of taxes which may be due from the Director of Internal Revenue for tax refunds, or otherwise, and to forthwith upon receipt of any such refunds pay them over to ASSIGNEE, and hereby empowers ASSIGNEE, as attorney in fact of ASSIGNOR, to make all claims for refunds which may be made by an attorney in fact.

2.6 ASSIGNEE shall have all powers, pursuant to the laws of the State of California to recover preferential transfers and fraudulent conveyances.

2.7 ASSIGNEE shall, within 70 days after the date of this General Assignment, designate in writing a person or persons who shall serve as SUCCESSOR ASSIGNEE hereunder in the event of the death or incapacity of ASSIGNEE prior to the discharge of all his obligations hereunder. Said person so designated as SUCCESSOR ASSIGNEE shall have 10 days thereafter to accept in writing such designation as SUCCESSOR ASSIGNEE and all of the rights and responsibilities thereof.

### III. ALLOWANCE AND PAYMENT OF CLAIMS

3.1 Except as otherwise provided herein, allowance of claims shall be determined by the standards set forth in 11 U.S.C. §§ 501 and 502.

3.2 May 10, 2002, shall be the last day to submit claims. Written notice of said last day to submit claims shall be given by first class mail, postage fully pre-paid, to all creditors. By filing a claim, each creditor shall waive and forever release and discharge all claims it has or may have against the ASSIGNOR, its officers, directors, shareholders, assignees, agents, attorneys, and employees. All claims not received by the ASSIGNEE by the last day to submit claims may, in ASSIGNEE'S sole and absolute discretion, be disregarded for purposes of distribution of assets as required hereunder.

3.3 The filing of a claim with the ASSIGNEE shall be deemed, with respect any matters concerning the allowance or rejection of a claim as provided in paragraph 3.4 hereof and any other matter arising at law or otherwise as a result of the making of this General Assignment and a creditor's consent thereto by filing a claim with the ASSIGNEE, consent to: (1) jurisdiction of the courts of the State of California; (2) venue in the Superior and/or Municipal Court of the State of California, Los Angeles Division, Long Beach Branch; and (2) waiver of a right to trial by jury.

3.4 ASSIGNEE shall determine whether any claim shall be allowed for payment hereunder pursuant to paragraph 3.1 hereof. If ASSIGNEE determines that a claim should not be allowed for distribution ("Rejected Claim"), ASSIGNEE shall give written notice to the holder of such claim at least 20 days prior to making any distribution to any claims having the same or lower priority as determined by paragraph 3.4 hereof. In the event that a creditor who holds a claim which is a Rejected Claim disputes the ASSIGNEE'S rejection of such claim, such creditor must commence suit, in the California Municipal or Superior Court, Los Angeles Division, Long Beach Branch, to establish such claim within 20 days after receiving the ASSIGNEE'S notification that the claim is not allowed. Failure to timely file and prevail in a lawsuit to establish the Rejected Claim will result in its disallowance for purposes of distributions of funds pursuant to the terms hereof.

3.5. After payment of the debts set forth in paragraphs 2.1, 2.2, 2.2.1, 2.2.2, 2.2.3 and 2.3 above, claims shall be paid in the following order of priority:

3.4.1. First, to all debts due to governmental agencies, pro rata until all such claims are paid in full with legal interest and penalties, if any.

3.4.2. Second, to claims of the type defined by 11 U.S.C. §507(a)(3).

3.4.3. Third, to claims of the type defined by 11 U.S.C. §507(a)(4).

3.4.4. Fourth, to all other claims. Such claims shall be paid pro rata until all such claims are paid in full with interest at 10% simple interest per annum on the unpaid principal amount of such claims.

3.4.5. Fifth, the surplus of monies and property, if any, to be transferred and conveyed to Assignor. If any undistributed dividends to creditors or any reserve of other funds shall remain unclaimed for a period of one year after issuance of dividend checks by the ASSIGNEE, then the same shall become the property of ASSIGNEE and used to supplement his fees for services rendered for administering this Assignment.

3.5. ASSIGNEE shall distribute assets as often as is reasonable and practical, as determined in the ASSIGNEE'S sole and absolute discretion, however, distributions shall be made no more often than every 90 days.

3.6. All disbursements made by the ASSIGNEE shall have appearing on their face the following legend: "Acceptance of this check by endorsement or other form of negotiation constitutes an absolute waiver of any right to contest the release stated to be in effect upon the filing of a claim pursuant to paragraph 3.2 of the General Assignment Agreement. THIS CHECK IS VOID IF NOT CASHED WITHIN 90 DAYS".

#### IV. OTHER PROVISIONS

4.1. It is agreed and understood that this transaction is a common law assignment for the benefit of ASSIGNOR'S creditors.

4.2. The ASSIGNOR understands and agrees that pursuant to CCP 1882(c) the ASSIGNOR shall provide the ASSIGNEE at the time of making of the assignment a list of creditors, equity holders, and any other parties in interest, which shall include the names, addresses, cities, states, and ZIP Codes for each person together with an amount of the person's anticipated claim in the assignment proceedings. The schedule is to be assigned under penalty of perjury by the ASSIGNOR'S representative.

4.3. Except as otherwise provided herein, this Agreement shall be construed in accordance with and governed by the laws of the State of California and enforcement of said Agreement may be had in only in the California Municipal or Superior Court, Los Angeles Division, Long Beach Branch.

4.4. In the event that any court holds any provision, term, covenant, or condition of this Agreement to be invalid, then any such invalidity shall not effect any other term, covenant, or condition and the remaining provisions of this Agreement shall be given full force and effect pursuant to the laws of the State of California, unless such invalid term, covenant, or condition is a material part of this Agreement.

4.5. In the event that ASSIGNEE should successfully defend any challenge by any creditor of all or any portion of this agreement, ASSIGNEE shall be entitled to reasonable attorneys' fee and costs.

4.6. Notwithstanding any other provisions hereof ASSIGNOR shall not have the right nor power to sell, assign, or otherwise transfer any interest in the names of ASSIGNOR.

4.7. This General Assignment shall be deemed to have been entered into in the City of Long Beach, State of California.

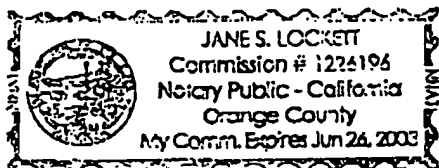
4.8. Performance under this General Assignment shall be deemed to be in the

City of Long Beach, State of California

This GENERAL ASSIGNMENT is made this 04 day of DECEMBER, 2001, at Long Beach, California.

ASSIGNEE  
eVU TECHNOLOGIES, INC.

By: [Signature]



STATE OF CALIFORNIA  
COUNTY OF Orange

On 12-04-01, before me, the undersigned, a Notary Public in and for said County and State, personally appeared [Signature], personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

[Signature]  
(Signature)

JANE S. LOCKETT

(Name Typed or Printed)

The foregoing GENERAL ASSIGNMENT is hereby accepted this 3rd day of December, 2001, at Long Beach, California.

ASSIGNEE

[Signature]  
DAVID R. HABEKUSH



STATE OF CALIFORNIA  
COUNTY OF Los Angeles

On Dec 17, 2001, before me, the undersigned, a Notary Public in and for said County and State, personally appeared DAVID R. HABEKUSH, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

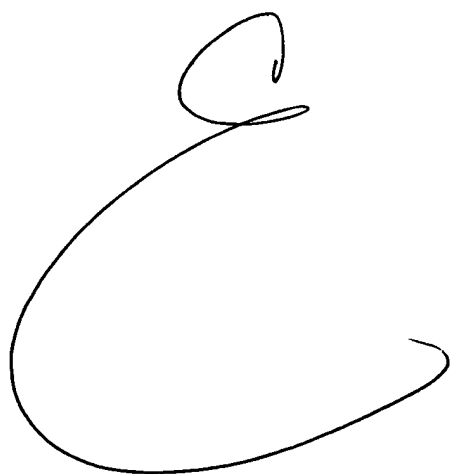
[Signature]

(Signature)

Sunset D. Steel

(Name Typed or Printed)

⋮



December 21, 2001

## ASSET PURCHASE AGREEMENT

**WHEREAS**, eVu, Inc.; a California corporation, has been assigned to David R. Haberbusch for the benefit of creditors. The assignment estate is the "Seller" and a Party to this Agreement;

**WHEREAS**, the Parties understand that Seller has a fiduciary duty to obtain the highest and best price possible for the Assets of eVu, Inc. Therefore this Agreement is subject to over bid by offers for eVu's assets qualifying pursuant to the terms of this Agreement.

**WHEREAS**, on December 28, 2001, Seller will conduct an auction of eVu, Inc.'s assets subject to certain liabilities at a time and place to be announced; and

**WHEREAS**, Seller desires to induce Harvest eVu, a California limited liability company, ("Buyer") to purchase the assets and assume certain liabilities of eVu, Inc.;

**WHEREAS**, Buyer is interested in purchasing the assets and assuming certain liabilities of eVu, Inc., on the terms and conditions set forth in this Agreement, and intends to bid for eVu, Inc.'s assets at the auction in accordance with the terms of this Agreement; and

**WHEREAS**, Buyer understands that eVu, Inc., entered into a contract with eBuilt, Inc., under which eBuilt writes computer program code for eVu's products. The contract provides for \$1.3 million to be paid to eBuilt by eVu. Presently eBuilt is in possession of the eVu program code, which is incomplete, and is owed \$415,000 for services under the contract, \$187,000 in the form of a note payable, and \$187,000 in equity in eVu. These claims total approximately \$790,000. Buyer is purchasing the assets subject to any claims of eBuilt against eVu and agrees to indemnify the assignment estate of eVu against such claims.

**NOW THEREFORE:** As of November 20, 2001, and in consideration of the promises and the mutual promises herein, and other good and valuable consideration, the adequacy and sufficiency of which the Parties hereby acknowledge, the Parties hereto agree as follows:

- 1. Definition of Closing** – The "Closing" of this transaction shall occur within five (5) business days after the date Seller determines that Buyer has submitted the winning bid for the assets of eVu, Inc., (the "Closing Date").
- 2. Bidding** – This Agreement shall constitute the bid of Buyer for the assets of the eVu estate in accordance with its terms. Any additional bids shall be in the sum of \$1.3 million or greater and bids thereafter shall be in minimum increments of \$100,000.
- 3. Qualification of Bidders** – Any bidder wishing to bid to for the assets of the eVu estate shall deposit cash and/or cash equivalent totaling \$631,000 with Seller at least 48 hours before the date and time set for the bidding to take place. If bidder submits the successful bid, the \$631,000 shall be applied to the purchase price. If bidder elects to inspect the intellectual property assets of the eVu estate under Section 4 of this Agreement, then \$300,000 of this \$631,000 shall be non-refundable if bidder fails to submit a successful bid.
- 4. Inspection of Patent and Intellectual Property Rights** – The Parties to this Agreement recognize that a bidder for the purchase of the assets of the eVu estate may wish to inspect the program

codes and other information relating to the patents pending, patents, and other intellectual property of the estate and that the misappropriation of intellectual property of the type held by the eVu estate is not difficult once one has inspected the program codes and other information relating to the eVu estate's intellectual property. Therefore, to protect the value of such property and the rights related to such property, Seller may allow an inspection if and only if the bidder requesting inspection: (a) qualifies as a bidder as set forth in Section 3 of this Agreement; (3) signs a Non-disclosure and Confidentiality Agreement acceptable to Seller, in his sole and absolute discretion; and (3) agrees that from the deposit given to become a qualified bidder the sum of \$300,000 shall be non-refundable under any condition. If, however, such bidder is the successful bidder, this sum shall be credited to the ultimate purchase price.

**5. Break-up Fee** – Buyer is undertaking at its own risk and expense due diligence with respect to the assets of the eVu estate and is loaning Seller money for the purpose of preserving the value and exclusivity of such assets. In consideration of Buyer's efforts to preserve the value of the estate, Seller agrees that if Buyer is not the successful bidder for the assets of the eVu estate, Buyer shall be repaid the loan with all accrued interest plus \$250,000 from the proceeds of the sale of the assets of the eVu estate.

**6. Sale of Property** – Upon Closing, Seller hereby sells, assigns, and grants to Buyer all right, title, and interest that Seller has in the following assets (the "Assets") as is and wherever located:

- a. All of eVu, Inc.'s personal property, including, but not limited to, all furniture, fixtures, equipment, supplies, patents pending, patents, claims to patents, copyrights, the name "eVu", related trademarks, trade names, and service marks, all other intellectual property, and other personal property. The material property is listed in Exhibit A to the best of eVu's knowledge..
- b. All rights in and to all agreements including any and all license agreements, nondisclosure agreements, assignment agreements, joint venture agreements, partnership agreements, maintenance agreements, representative agreements, service agreements, distribution agreements, and agreements for leased equipment and showing, for each agreement, the names of the parties and the date of the agreement. The agreements are listed on Exhibit B to the best of eVu's knowledge.
- c. All accounts receivable of eVu, Inc., existing as of the Closing Date. A list of accounts receivable as of the Closing Date showing the name of each customer and the date and amount of each invoice, is attached hereto as Exhibit D, to the best of eVu's knowledge..
- d. All rights, title, and interest, in and to all intangible property of eVu, Inc., including, but not limited to, trade secrets, inventions (including U.S. and foreign patents, patent applications, and their equivalents), know-how, processes, marketing procedures, formulae, software, drawings, patterns, vendor lists, customer lists, customer files, customer records, computer files, trade and other association memberships and rights, and licenses and permits susceptible of transfer under regulatory agency rules. The intangible property is listed on Exhibit E to the best of eVu's knowledge.



e. Fictitious business names and goodwill relating to eVu, Inc., and any assets or rights primarily related to the Assets specified above, such as express or implied warranties primarily relating to the Assets, and all information and records, whether reduced to physical form or otherwise, acquired for, use in, or primarily related to such Assets, including without limitation, customer files.

The assets described above shall be referred to collectively as the "Assets".

**7. Purchase Price** – Upon Closing, Buyer agrees to pay Seller \$81,000 in cash and forgive loans evidenced by Promissory Notes and that certain Security Agreement dated December 20, 2001, including all interest and expenses related to such loans, up to \$150,000 plus interest and expenses.

**8. Assumption of Liabilities** – Buyer shall assume at Closing, and thereafter in due course will pay and fully satisfy each of the following: (i) all monies owed to eBuilt, Inc., by eVu totaling approximately \$790,000 under a contract between eBuilt and eVu to write computer program code (ii) plus the liabilities listed in Exhibit F, (iii) all liabilities and obligations of any nature arising from the operations of eVu, Inc.'s business in the ordinary course after the Closing Date, and (iv) all liabilities and obligations with respect to actions that occur after the Closing Date under any and all of the agreements listed in Exhibits to this Agreement, and (v) all liabilities and obligations associated with the employment or termination after the Closing Date of any employee of eVu, Inc., (all such liabilities and obligations described in this subparagraph (a), but excluding those liabilities referred to in the following subparagraph (b) are collectively referred to as the "Assumed Liabilities"). Notwithstanding anything contained in this Section 4(a) to the contrary, Buyer shall not assume any of the Excluded Liabilities (as defined in subparagraph (b) below).

(b) Seller shall retain the following liabilities: (i) all liabilities of eVu, Inc., for any Federal, State, foreign or local taxes, including but not limited to, income or franchise taxes, sales, use, transfer, social security, unemployment, disability, payroll, real property, personal property, occupancy, excise, payroll taxes, withholding taxes and assessments, plus any interest or penalties incurred in connection therewith attributable to the Assets for all periods (including any partial periods) ending prior to the Closing Date; (ii) all liabilities, obligations and claims to the extent arising out of or based upon events occurring prior to the Closing which are covered by any workers compensation, general liability, casualty, property damage, products liability, auto liability, excess general liability or any other insurance policy or program, including self insurance programs, maintained by or on behalf of eVu, Inc., (iii) those liabilities and obligations of eVu, Inc., that are specifically described on Exhibit G; and (iv) all other matters arising out of in connection with the operations of eVu, Inc., before the Closing Date (other than Assumed Liabilities) (the "Excluded Liabilities"). No other liabilities or obligations of any nature, whether known or unknown, whether fixed or contingent, accrued or unaccrued, shall be assumed by Buyer.

**9. Books and Records** – Seller agrees to deliver to Buyer all books, records, agreements, and other writings, or copies thereof, that are customarily kept for such businesses or that Buyer reasonably needs to carry on eVu's business.

**10. Seller's Deliveries at Closing** - At the Closing, Seller shall deliver or cause to be delivered to Buyer individual assignments of each and every Asset purchased by Buyer which requires an assignment to perfect Buyer's interest in such Asset, including but not limited to, the Assets listed

in the Exhibits to this Agreement, all patents, other intellectual property, licenses, and other agreements;

**11. Expenses** - The Parties to this Agreement shall bear their own costs and expenses, including attorneys' fees, in negotiating and closing this Agreement.

### **SELLER'S WARRANTIES**

**12. Due Incorporation and Authority** – Seller represents and warrants that Seller is an assignee under a general assignment of the corporation eVu, Inc., which is duly organized, validly existing and in good standing under the laws of the State of California.

**13. Authority to Execute and Perform Agreement** – Seller represents and warrants that he has the full legal right and power and all authority and approval required to enter into, execute, and deliver this Agreement, and to perform fully his obligations under this Agreement. This Agreement has been duly executed and delivered by Seller. This Agreement is the valid and binding obligation of Seller, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights, or by limitations in the availability of specific performance or injunctive relief.

**14. No Material Breaches or Conflicts** – Seller represents and warrants that neither the execution of this Agreement nor the performance hereof by Seller will: (i) conflict with or result in any breach or violation of the terms of any decree, judgment, order, law or regulation of any court or other governmental body now in effect applicable to eVu, Inc., (ii) violate or conflict with any provision of eVu, Inc.'s Articles of Incorporation or Bylaws or similar organizational instruments; or (iii) give rise to any dissenter's rights or other claims from eVu, Inc.'s shareholders.

**15. Litigation** - Seller represents and warrants that as of this Date, there is no litigation relating to eVu, Inc., to which Seller is a party and Seller has no knowledge of any pending or threatened suit, action, arbitration proceeding, governmental investigation, or other legal proceeding relating to eVu, Inc., or against Seller, any of its employees or independent contractors, or other affiliates which might have a material adverse impact on eVu, Inc.'s business except for claims by eBuilt, Inc.

**16. Taxes** - Seller represents and warrants that no taxing authority, including, but not limited to, the Internal Revenue Service, the California Franchise Tax Board, the California State Board of Equalization, or the Employment Development Department, has any claim against any of the Assets being sold to Buyer. Seller agrees to hold Buyer harmless from any such claims arising from any transactions prior to the Closing Date and, if any such claims are made, to indemnify Buyer and/or its officer, directors, and affiliates under the indemnity provisions of this Agreement.

### **BUYER'S WARRANTIES**

**17. Buyer's Formation and Authority** – Buyer represents and warrants that it is a limited liability company duly organized, validly existing, and in good standing under California law.

**18. Buyer Authority to Execute and Perform Agreement** – Buyer represents and warrants that it has the full legal right and power and all authority and approval required to enter into, execute, and deliver this Agreement, and to perform fully its obligations under this Agreement. Buyer has duly executed and delivered this Agreement. This Agreement is the valid and binding obligation of Buyer, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights, or by limitations in the availability of specific performance or injunctive relief.

**19. Due Diligence and Pre-Conditions to Closing** – Seller and Buyer shall each have the right to conduct due diligence investigations of the other Party and the Parties agree to cooperate fully in providing information for such due diligence investigations. The Closing shall not take place unless each of the following conditions is met or waived in writing by the Parties:

a. Buyer is satisfied as a result of its due diligence inquiry that all of Seller's representations and warranties in this Agreement, and the facts stated in the Exhibits to this Agreement, are accurate or that there are no material inaccuracies or omissions in such representations, warranties, and Exhibits.

c. Seller is satisfied as a result of his due diligence inquiry that all of Buyer's representations and warranties stated in this Agreement are accurate or that there are no material inaccuracies or omissions in such representations and omissions.

## **OTHER TERMS**

**20. Brokers and Finders** - Neither Seller nor Buyer nor any shareholder, director, officer, partner, employee or agent of Seller or Buyer has retained any broker or finder in connection with the transactions contemplated by this Agreement. Each Party shall indemnify and hold the other Party harmless against all claims for brokers' or finders' fees made or asserted by any party claiming such fees and related to the Indemnifying Party including all costs and expenses (including reasonable attorneys fees) of investigating and defending any and all such claims.

**21. Seller's Indemnity of Buyer** - Seller shall indemnify and hold harmless Buyer from and against any and all losses, costs, expenses, liabilities, claims, demands, and judgments of every nature, including the cost of investigation and defense thereof and reasonable attorneys' fees incurred ("Buyer' Damages") which arise out of or based upon: (i) the material breach by Seller of any representation or warranty Seller makes in this Agreement; (ii) the material non-performance, partial or total, of any covenant Seller makes in this Agreement; (iii) liabilities under any employee plans of eVu, Inc., incurred prior to the Closing Date, (iv) claims for brokers' or finders' fees based on alleged agreements with eVu, Inc., or its affiliates; and (v) any other liabilities of eVu, Inc., which Buyer is not assuming, including, without limitation, any of the Excluded Liabilities.

**22. Buyer Indemnity of Seller** - Buyer shall indemnify and hold harmless Seller and his partners from and against any and all losses, costs, expenses, liabilities, claims, demands, damages, and judgments of every nature, including the costs of investigation and defense thereof and reasonable attorneys' fees incurred ("Seller's Damages"), which arise out of: (i) the breach by Buyer of any representation or warranty Buyer makes in this Agreement; (ii) claims for brokers' or finders' fees based on alleged agreements with Buyer or its affiliates; (iii) the non-performance, partial or total,

of any covenant Buyer makes in this Agreement; (iv) the failure to pay, perform, discharge and satisfy any liabilities Buyer assumes under this Agreement including the Assumed Liabilities; (v) the conduct of the eVu, Inc.'s business by Buyer from and after the Closing; or (vi) the ownership, use, operation or maintenance of the Assets by Buyer after the Closing (including any claim for taxes (of any nature whatsoever), governmental charges, interest thereon or penalties associated therewith asserted against Buyer with respect to any taxes related to the use of the Assets for any period after the Closing Date.

**23. Third Party Actions and Waiver of Rights to Indemnity** - Each Party shall have the right to hire its own counsel to defend any third party claims relating to the business of eVu, Inc., and the Parties agree to cooperate and assist each other in defending and minimizing costs and expenses in connection with defending against any third party claims. If a Party breaches this Agreement by failing to timely notify the other Party of any claim or failing to reasonably cooperate in defending any claim and such breach causes material damage to the other Party, the breaching Party's right to indemnity shall be deemed waived. No Party shall (i) admit to any liability of any other Party to this Agreement, or (ii) prejudice or settle any claim affecting another Party, without such Party's prior written consent, which shall not be unreasonably withheld. The terms of any and all settlements of third party claims shall be strictly confidential unless all Parties agree, or a Court requires, disclosure.

**24. Survival of Terms** - All warranties and representations contained in this Agreement shall be continuous and shall survive the Closing for two years from the Closing.

**25. Assignment**- This Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

**26. Severability** - If a court or arbitrator finds that one or more of provisions of this Agreement is or are illegal or unenforceable for any reason, each such provision shall be adjusted rather than voided, if possible, in order to achieve the intent of the provision to the extent possible. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the fullest extent possible.

**27. Integration Clause** - This Agreement and the related Security Agreement and Promissory Notes constitute the entire understanding between the Parties and supersede all prior proposals and agreements, oral or written, and all prior or contemporaneous communications between the Parties relating to the subject of this Agreement. This Agreement may only be amended or modified by a writing signed by the Party against whom such amendment or modification is being enforced.

**28. Waiver** - No Party's right to require performance of another Party's obligations under this Agreement shall be affected by any previous delay in enforcing such right, express waiver of prior similar right to require performance, or course of dealing.

**29. Governing Law** - The laws of the State of California shall govern this agreement. The Parties agree that this agreement has been made in California with the express intent that the jurisdiction of California courts shall be exclusive and that California law shall be applied to this Agreement.

**30. Dispute Resolution** - The Parties agree to submit any disputes involving money or damages greater than \$5,000 relating to this Agreement and/or transactions, duties, or obligations to be performed under this Agreement, to mediation with a mediator approved by the Parties to the dispute. If the Parties resolve their disputes through mediation, the Parties shall share the mediator's fees evenly but pay their own attorneys' fees and other expenses related to mediation. If mediation fails to resolve all disputes within thirty (30) days after submission to a mediator, then either Party may file suit or request arbitration. The prevailing Party in any arbitration relating to transactions contemplated by this Agreement shall be entitled to costs and expenses including reasonable attorneys fees and the attorney's fees and expenses incurred in connection with mediation that failed to resolve the dispute. Claims of \$5,000 or less may be submitted to the appropriate small claims court.

**31. Covenant to Perform** - Each Party covenants and agrees to perform all acts and execute, acknowledge and deliver any and all further documents or instruments as may be reasonably required for the purpose of giving full force and effect to this Agreement.

**32. Interpretation of this Agreement** - The Parties acknowledge that they and their attorneys have had an opportunity to review this Agreement in detail and to comment on and draft any and all additional terms or modifications to this Agreement. Accordingly, the Parties agree that this Agreement shall not be interpreted against any Party under California Civil Code § 1654 because the attorney for that Party drafted this Agreement or any provision of this Agreement.

**33. Headings** - Headings contained herein are for convenience only and shall not be deemed a part of this Agreement for any purpose.

**34. Notices** - Notices under this Agreement shall be sufficient only if sent (a) by facsimile and overnight courier or U. S. Mail, or (b) personally delivered to the Parties. Notices shall be addressed as follows:

**To Seller:**

David R Haberbush, Esq.  
Suite 600  
444 West Ocean Boulevard  
Long Beach, CA 90802

Fax: (562) 435-6335  
E-mail: HC@hcinsolvency.com  
Telephone: (562) 435-3456

**To Buyer:**

Robert T Harvey  
Harvest eVu, LLC  
Suite 300  
26111 Antonio Pkwy  
Rancho Santa Margarita, CA 92688

Fax: (949) 888-2326  
E-mail: Bob@techharvest.com  
Telephone: (949) 888-3781

**With a copy to:**

C. Timothy Smoot, Attorney  
23505 Crenshaw Blvd., Suite 263  
Torrance, CA 90505-5221

Fax: (310) 530-2211  
E-mail: [smoot@earthlink.net](mailto:smoot@earthlink.net)  
Telephone: (310) 530-3366

IN WITNESS WHEREOF, the Parties execute this Agreement as the last date written below.

Date: December 26, 2001

**DAVID R. HABERBUSH, ASSIGNEE FOR THE  
BENEFIT OF CREDITORS OF EVU, INC.**

  
\_\_\_\_\_  
David R. Haberbush, Assignee

Date: December 26, 2001

**HARVEST EVU, LLC**

By:   
\_\_\_\_\_

Robert Harvey, Manager

**EXHIBIT A**  
**PERSONAL PROPERTY**

**A. Patents**

**B. Other Intellectual Property**

**C. Equipment**

10 desktop computers

5 monitors

2 Sun Boxes

2 Netra T1

1 Network Appliance NetCache

1 printer

1 fax machine

1 ViewSonic Projector

**D. Furniture**

**EXHIBIT B**  
**AGREEMENTS**

**Schedule of Licenses:**

<b>License</b>	<b>Description</b>	<b>Application Number</b>
Co/Equal License with SpeedVu	eVU owned Equal License Rights to license the technology defined by Tom Amon's patent applications for PROVIDER SELECTED MESSAGE IN RESPONSE TO USER REQUEST	PCT/US98/16685; US 08,912,991; Foreign applications (numbers not available).

**Schedule of Contracts:**

<b>Contract</b>	<b>Description</b>	<b>Contract Date</b>
eBuilt/eVU contract	Contract between eVU and eBuilt to develop software for the administration and delivery of messaging over the Internet.	July 18, 2000



**EXHIBIT D**  
**RECEIVABLES**

None

**EXHIBIT E**  
**INTANGIBLE PROPERTY**

Schedule of Patents:

Patent	Description	Application Number
Full Screen Messaging Format	overtake full screen of user to deliver content	031409.0001.PRV3
Dynamic Server Side Timer Control Bar Insertion	employs tool bar for user to manage delivered content	031409.0002.PRV
Intelligent Salesman	process for delivering sequenced content triggered by user selections	031409.0003.PRV
Providing Emergency Information	process for delivering time critical content over multiple networks	031409.0004.PRV1
Providing Late Breaking News Alerts Provider- Selected Message	process for delivering time critical news content over multiple networks Co-exclusive license rights	031409.0005.PRO 08/912,991

**EXHIBIT F**

**LIABILITIES ASSUMED BY BUYER**

All debts and obligations owed to e-Built.

F

## ASSET ACQUISITION AGREEMENT

As of December 31, 2001 EdgeCast Software, Inc., a California corporation, ("EdgeCast") and Harvest EVu, LLC, a Delaware Limited Liability Company, ("Harvest EVu"), agree that EdgeCast shall purchase all of the assets and certain liabilities of Harvest EVu on the following terms and conditions.

### RECITALS

**A. Whereas**, Harvest Evu, LLC, is an Internet investment company intended to identify early stage companies that serve the Internet with evolving technologies;

**B. Whereas**, in furtherance of EdgeCast's business, Harvest EVu purchased the assets of Evu Technologies, Inc., and advanced expenses for that effort, now completed;

**C. Whereas**, Harvest Evu filed and has currently pending before the United States Patent and Trademark Office business methods patents of various methods and forms of conducting auctions, the implementation of which the Software has been designed to provide, which are identified in Schedule 2.1(a) to this Agreement;

**D. Whereas**, Harvest EVu is dissolving and desires that the consideration for the assets being purchased be distributed to its members;

**E. Whereas**, Harvest EVu desires to sell and EdgeCast desires to acquire all rights in Harvest EVu's assets on the terms and subject to the conditions of this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

**1. Recitals** - The foregoing Recitals are hereby restated and made a part of this Agreement as if fully included in this paragraph.

#### **2. Sale of Assets and Transfer of Liabilities -**

**2.1 Purchased Assets** - Harvest Evu hereby sells, assigns, transfers, conveys and delivers to EdgeCast and EdgeCast hereby purchases and acknowledges delivery from Harvest Evu, all assets, tangible and intangible, that Harvest EVu purchased from EVu Technologies, Inc., on December 28, 2001, plus all assets purchased with monies supplied by Harvest EVu to maintain the business and assets prior to entering into this Agreement including but not limited to the following assets:

**(a) Intellectual Property** - The patents, copyrights, trademarks, and service marks identified in Schedule 2.1(a) attached hereto and all other intellectual property that Harvest EVu acquired from EVu Technologies, Inc.;

December 31, 2001

**(b) Contracts, Licenses and Agreements** – All contracts licenses, and agreements related to the Intellectual Property and that Harvest EVu purchase from EVu Technologies, Inc. Such contracts, licenses, and agreements are listed in Schedule 2.1(a) and 2.1(b).

**(c) Equipment** - The equipment identified on Schedule 2.1(c) attached hereto;

**(c) Records, Files, Literature** - All records, files, customer and supplier lists, specifications, designs, sales and promotional literature, catalogs, and similar records or materials relating to the EVu Technologies' business; and

**(d) General Intangibles** - All causes of action or liabilities in which Harvest Evu is plaintiff arising out of occurrences before December 31, 2001.

**2.2 Liabilities to be Assumed; Exclusion Relating to Liabilities** - EdgeCast shall assume the liability of Harvest Evu relating to the current EBuilt, Inc. contract, plus any all additional liabilities Harvest EVu acquired from EVu Technologies, Inc., or incurred in connection with purchasing the assets prior to entering into this Agreement. Notwithstanding anything in this Agreement to the contrary, under no circumstance whatsoever shall EdgeCast assume or take any of the Purchased Assets subject to any undisclosed, remote, or contingent liability.

**2.3 Purchase Price** – In consideration for the Purchased Assets, EdgeCast shall issue 266,667 shares of Series A Preferred Stock valued at Two Hundred Thousand Dollars (\$200,000) (the "Purchase Price") to Harvest EVu members. The stock shall be issued according to a schedule to be supplied by Harvest EVu reflecting the contribution of its members to the purchase of the assets of EVu Technologies, Inc. The terms, preferences, and conditions of the Series A Preferred Shares to be issued are stated in Schedule 2.3 attached.

**2.4 Closing** - At the Closing on a date to be agreed to by the Parties, Harvest Evu shall have delivered or caused to be delivered to EdgeCast, the following:

(a) An executed general warranty bill of sale and assignment in the form of Exhibit A attached hereto (the "Bill of Sale");

(b) An executed Patent Assignment for each of the Patents;

(c) The assignment of the EBuilt contract and accompanying liability;

(d) The files of patent counsel and the files of general counsel of Harvest Evu to the extent pertaining to the Assets, including the intellectual property of eVu Technologies; and

(e) Such other documents as EdgeCast reasonably requests to affect the transfer of the Purchased Assets and the other transactions contemplated by this Agreement.

December 31, 2001

At the Closing, EdgeCast shall have delivered to Harvest EVu's members the Purchase Price, in the Series A Preferred Stock of EdgeCast titled in the names Harvest EVu members according to a schedule to be supplied to EdgeCast.

**3. Representations and Warranties of Harvest EVu** - Harvest EVu represents and warrants as of the Closing Date as follows:

**3.1 Organization; Authorization** - Harvest EVu is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Harvest EVu has full power and authority to enter into this Agreement and has taken all necessary actions to authorize, execute, and deliver this Agreement and perform its obligations under this Agreement. This Agreement constitutes the valid and legally binding obligation of Harvest EVu, enforceable in accordance with its terms.

**3.2 No Violation** - Neither Harvest EVu's execution and delivery of this Agreement or the other instruments that Harvest EVu is required to execute and deliver in connection with this Agreement, nor Harvest EVu's consummating the transactions contemplated hereby and thereby (a) will violate any statute, law, rule, regulation, order, writ, injunction or decree of any court or governmental authority, (b) will require any authorization, consent, approval, or other action by or notice to any court, administrative or governmental agency, or any party to any contract, or (c) will violate or conflict with, or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or will result in the termination of, or accelerate the performance required by, any contract or result in the creation of any security interest, claim, option, levy, restriction, limitation or encumbrance of any nature whatsoever (collectively, "Lien") upon any of the Purchased Assets.

**3.3 Title to and Condition of Assets** - Harvest EVu has good, indefeasible, and exclusive title to all the Purchased Assets, free and clear of all liens. Harvest EVu has the power and right to sell, assign, and transfer the Purchased Assets to EdgeCast as contemplated in this Agreement. At Closing, EdgeCast will receive good, indefeasible, and exclusive title to all the Purchased Assets, free and clear of all liens except as disclosed in this Agreement or the Schedules hereto. To the knowledge of Harvest EVu, there are no investigations, claims, or litigation challenging or threatening to challenge or that would threaten or challenge EdgeCast's exclusive right, title, and interest in any of the Purchased Assets on or following the Closing Date.

**3.4 No Litigation** - There is no action, suit, arbitration, proceeding, investigation, or inquiry pending or to the knowledge of Harvest EVu, LLC threatened against Harvest EVu, its business, or any of the Purchased Assets except as disclosed in this Agreement or the Schedules hereto. Harvest EVu reasonably believes such proceedings are not likely to be brought after the Closing based on any ground which is related to the business of Harvest EVu before the Closing, and Harvest EVu, to the best of its knowledge does not know of any claim or proceeding that will arise from or be based upon the sale of the Purchased Assets to EdgeCast effectuated hereby. Neither Harvest EVu nor the Purchased Assets are subject to any judgment, order, writ or injunction of any court, arbitrator, or federal, state, foreign, municipal or other governmental department, agency or instrumentality.

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**3.5 Compliance With Laws** - Harvest EVu is in compliance with all applicable federal, state, local and foreign laws, rules, and regulations applicable to it (collectively, "Laws"), including, without limitation, all Laws relating to the environment, employee benefits, health, welfare and safety, employment, sale or advertising of product and trade practices, and has obtained all licenses, permits, and consents of all governmental and regulatory authorities required for the conduct of its business. Harvest EVu has not received notice of any violation or alleged violation of, and is not subject to liability for past or continuing violation of, any Laws.

**3.6 Contracts and Commitments** - Harvest EVu has no lease, license, contract, commitment or agreement of any nature that would or could affect in any manner EdgeCast's exclusive enjoyment of the Purchased Assets. Harvest EVu is not in default under any contract, nor has any event or omission occurred which through the passage of time or the giving of notice, or both, would constitute a default thereunder or cause the acceleration of any of Harvest EVu's obligations or result in the creation of any Lien on any of the assets owned or used by Harvest EVu. To the knowledge of Harvest EVu, no third party is in default under any contract.

**3.7 No Other Warranties** - EXCEPT AS PROVIDED IN THIS SECTION 3, THE INTELLECTUAL PROPERTY, REGISTERED INTELLECTUAL PROPERTY AND THE EDGECAST INTELLECTUAL PROPERTY ARE PROVIDED "AS IS" AND HARVEST EVU MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. HARVEST EVU SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**4. Representations and Warranties of EdgeCast** - EdgeCast represents and warrants to Harvest EVu as of the Closing Date as follows:

**4.1 Organization and Good Standing** - EdgeCast is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

**4.2 Authorization** - EdgeCast has full corporate power and authority to enter this Agreement and has taken the necessary actions to authorize, execute, and deliver this Agreement and to perform all of EdgeCast's obligations hereunder. This Agreement constitutes the valid and legally binding obligation of EdgeCast, enforceable against EdgeCast in accordance with its terms.

## **5. Miscellaneous.**

**5.1 Further Assurances.** From time to time, at EdgeCast's request and without further consideration, Harvest EVu agrees to execute and deliver to EdgeCast such documents and take such other action as EdgeCast may reasonably request to consummate the transactions contemplated hereby and to vest in EdgeCast good, valid, and exclusive title to the Purchased Assets, including, without limitation, any filings with the United States Patent and Trade-



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mark Office in furtherance of the transfer of the Patents and trademarks to be effectuated hereby.

**5.2 Survival of Warranties.** The representations and warranties of EdgeCast and Harvest EVu contained in or made pursuant to this Agreement shall survive the Closing.

**5.3 Successors and Assigns -** The terms, conditions, and obligations under this Agreement shall inure to the benefit of and be binding upon the respective heirs, successors, and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto and the members of Harvest EVu who supplied funds to maintain the business and assets being purchased, or their respective heirs, successors and assigns any rights, remedies, obligations, or liabilities.

**5.4 Governing Law -** The laws of the State of California shall govern this Agreement as this Agreement was made and to be performed solely within the State of California.

**5.5 Counterparts -** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**5.6 Headings -** The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

**5.7 Notices -** Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified, one day after deposit for delivery by overnight carrier, or five days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at:

If to EdgeCast:

EdgeCast Software, Inc.  
Suite I  
5031 Birch Street  
Newport Beach, CA 92660  
Attn: Chief Executive Officer

If to Harvest EVu:

Harvest EVu  
26111 Antonio Pkwy., Suite 300  
Rancho Santa Margarita, CA 92688  
ATTN.: Robert Harvey, Mgr.

Or at such other address as such party may designate by ten (10) days' advance written notice to the other party.

**5.8 No Finder's Fee.** Each party represents that it neither is nor will be obligated for any finders' fee or commission in connection with this transaction. Harvest EVu and EdgeCast each agree to indemnify and to hold harmless the other from any liability for any commission or compensation in the nature of a finders' fee (and the costs and expenses of defending against such liability or asserted liability) for which it is responsible.

**5.9 Dispute Resolution -** The Parties agree to submit any disputes involving money or damages greater than \$5,000 relating to this Agreement and/or transactions, duties, or obliga-

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tions to be performed under this Agreement, to mediation with a mediator approved by the Parties to the dispute. If the Parties resolve their disputes through mediation, the Parties shall share the mediator's fees evenly but pay their own attorneys' fees and other expenses related to mediation. If mediation fails to resolve all disputes within thirty (30) days after the Parties submit the dispute to a mediator, then either Party may file a court action or request arbitration. The Parties agree that mediation is a pre-condition to filing an action of any kind. The prevailing Party in any action or arbitration relating to transactions contemplated by this Agreement shall be entitled to costs and expenses including reasonable attorneys fees and the attorney's fees and expenses incurred in connection with mediation that failed to resolve the dispute. Claims of \$5,000 or less may be submitted to mediation or small claims court.

**5.10 Amendments and Waivers** - Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of EdgeCast and Harvest EVu.

**5.11 Severability** - If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

**5.12 Entire Agreement** - This Agreement (including the schedules and exhibits hereto) is the complete and exclusive statement of the mutual understanding of the parties and supersedes all previous written and oral agreements and communications relating to the subject matter herein.

IN WITNESS WHEREOF, the parties execute this Agreement as of December 31, 2001.

Date: January 7, 2002

Harvest EVu, LLC

By: see exhibit A  
Robert Harvey, Manager

Date: January 7, 2002

EdgeCast Software, Inc.

By: Nicholas Dauderman  
Nicholas Dauderman, President

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**Schedule 2.1(a)**  
**Intellectual Property**

**INTANGIBLE PROPERTY**

**Schedule of Patents:**

<b>Patent</b>	<b>Description</b>	<b>Application Number</b>
Full Screen Messaging Format	overtake full screen of user to deliver content	031409.0001.PRV3
Dynamic Server Side Timer Control Bar Insertion	employs tool bar for user to manage delivered content	031409.0002.PRV
Intelligent Salesman	process for delivering sequenced content triggered by user selections	031409.0003.PRV
Providing Emergency Information	process for delivering time critical content over multiple networks	031409.0004.PRV1
Providing Late Breaking News Alerts	process for delivering time critical news content over multiple networks	031409.0005.PRO
Provider- Selected Message	Co-exclusive license rights	08/912,991

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**Schedule 2.1(b)**  
**Contracts, Licenses, and Other Agreements**

Schedule of Licenses:

License	Description	Application Number
Co/Equal License with SpeedVu	eVU owned Equal License Rights to license the technology defined by Tom Amon's patent applications for PROVIDER SELECTED MESSAGE IN RESPONSE TO USER REQUEST	PCT/US98/16685; US 08,912,991; Foreign applications (numbers not available).

Schedule of Contracts:

Contract	Description	Contract Date
eBuilt/eVU contract	Contract between eVU and eBuilt to develop software for the administration and delivery of messaging over the Internet.	July 18, 2000

**LIABILITIES ASSUMED BY BUYER**

All debts and obligations owed to e-Built.

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**Schedule 2.1(c)**  
**(Servers and Equipment)**  
**HARVEST EVU INVENTORY LIST**

10 desktop computers

5 monitors

2 Sun Boxes

2 Netra T1

1 Network Appliance NetCache

1 printer

1 fax machine

1 ViewSonic Projector

December 31, 2001

### Schedule 2.3

#### EdgeCast Software, Inc. Series A Preferred Term Sheet January 31, 2002

Series A Preferred Stock Offering: EdgeCast Software, Inc. (the "Company") will offer \$200,000 (the "Offering") of Convertible Preferred stock (the "Series A Preferred") to HarvestEvo investors (collectively, the "Purchasers"). The Series A Preferred will be convertible into common stock of the Company (the "Common Shares") which will equal 44.4% of the Company post-closing after including the Founders Shares and Warrants described below (a \$500,000 pre-money valuation).

#### Terms of the Preferred

**Warrants:** For every three shares of Series A Preferred purchased, the purchasers shall receive one Warrant to purchase Common Stock at the price of \$0.01 per share as specified in the Founders' Common Stock Purchase Warrant Agreement.

**Dividends:** The Series A Preferred will participate in all dividend payments (in cash, stock or otherwise) on an as-converted basis when and if a dividend is paid to the holders of the Common Shares.

**Redemption:** The holders of Series A Preferred will have the option to require the Company to redeem all or any part of their shares of Series A Preferred, plus any declared but unpaid dividends on the fifth anniversary of the closing. Redemption price to be the greater of Cost or Fair Market Value.

**Voluntary Conversion:** The holders of the Series A Preferred shall have the right to convert such shares, or any part of such shares, at the option of the holder, at any time, into Common Shares at the then applicable conversion ratio, which shall initially be 1 to 1. The conversion rate applicable to the Series A Preferred upon such conversion shall be determined by dividing (A) the Conversion Price (as such term is defined below) by (B) the Original Cost (as such term is defined below).

**Automatic Conversion:** The Series A Preferred will be automatically converted into Common Shares at the then applicable conversion ratio on the closing of a firm commitment public offering of securities underwritten by a major bracket underwriter with proceeds to the Company of \$15,000,000 or more (net of all underwriting discounts, commissions and expenses) and at a price per share of at least three times the then effective Conversion Price.

#### Liquidation

**Preference:** In the event of a Liquidation, the holders of the Series A Preferred will be entitled to receive, prior and in preference to any distribution to the holders of the Common Shares, one and a half times (1.5x) their original purchase price plus any accrued but unpaid dividends ("Original Cost") in preference to the Common Shares and then will share pro-rata with the holders of the Common Shares in the remaining proceeds. In no event shall the holders of the Series A Preferred receive less than 150% of their Original Cost.

"Liquidation" means the liquidation, winding up, or sale of all or substantially all of the company's assets, or a sale of the Company or a controlling interest in the Company, or a consolidation or merger of the Company where the shareholders of the Company do not continue to hold at least a 50 % interest in the successor entity.

**Anti-Dilution:** Anti-dilution protection shall be provided for reorganizations, stock splits, stock dividends, combinations, consolidations, stock distributions, recapitalizations, reclassifications or other similar events. The Conversion Price shall be adjusted on a weighted average basis for issuances below the Conversion Price of the Series A Preferred or below the then current market price of the Common Stock, other than (i) the sale of shares of Common Stock pursuant to the exercise of options or warrants to employees of the Company and (ii) shares

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of Common Stock issued as consideration in Board-approved acquisitions. The "Conversion Price" means the Original Cost.

#### **Other Terms**

**Board of Directors:** The Company will have a Board of Directors with seven seats. The holders of the Common Shares will have the right to elect two directors, which shall initially be founders Grover Moss and Robert Harvey. The holders of the Series A Preferred will have the right to elect two directors, which shall initially be Ernie Burnett and a member to be named later. The remaining board seats shall remain open and to be allocated for future rounds of funding and appointments of "independent" directors who will be selected via search processes.

**Committees of the Board:** At the first Board meeting following the closing, compensation and audit committees will be established as outlined below.

##### **Compensation Committee:**

A compensation committee of the Board will be formed consisting of two non-management Directors. The compensation committee will approve all increases in executive compensation, annual executive bonuses and all option grants.

##### **Audit Committee:**

An audit committee of the Board will be formed consisting of two non-management Directors. This committee will approve the engagement of the Company's auditors and approve the audit prior to its issuance each year.

**Voting Rights:** On all matters not specifically outlined herein, voting will take place on an as converted basis. A vote of the holders of two-thirds of the Series A Preferred will be required to approve the following: (i) creation, authorization, sale or issuance of any class or series of capital stock or rights to acquire capital stock that is senior or pari-passu to the Series A Preferred, (ii) any action (including, without limitation, amendments to the Company's By-laws or Charter) which in any manner adversely affects the Series A Preferred, (iii) issuance of debt in excess of the stockholders' equity in the Company, or authorization, creation or issuance of shares of any class or series of any bonds, debentures, notes or other obligations convertible into or exchangeable for, or having optional rights to purchase, any shares having any preference or priority or which adversely affect the Series A Preferred, (iv) redemption of the Common Shares (except pursuant to employee agreements), (v) payment of dividends or (vi) any sale, merger, liquidation or change of control of the Company.

**Registration Rights:** The holders of the Series A Preferred will receive customary registration rights including two demand registrations which are effective after an initial public offering, unlimited "piggy-back" registration rights and S-3 registration rights, Company payment of all registration expenses, transfer of registration rights, proportionate underwriter cut-backs. The definitive documentation will also include other typical registration provisions.

**Information Rights:** So long as an investor continues to hold Series A Preferred Shares with an original cost of at least \$50,000, such investor will have the right to inspect the books of the Company, and the Company shall deliver to such investor: monthly unaudited financial statements within 20 days after the end of the period with comparisons to the prior years and budget for that period (including projections); annual audited financial statements within 3 months after the end of the year; and monthly and annual management projections and budgets one month prior to the start of the year. The foregoing provisions will terminate upon a firm commitment public offering of securities underwritten by a major bracket underwriter with net proceeds to the Company of \$15,000,000 or more and at a price per share of at least three times the then effective Conversion Price.

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**Preemptive Rights:** If the Company proposes to offer any equity securities (other than shares issued in connection with the acquisition of another company, shares issued to lessors or lenders if such transactions have Board approval, or shares offered to the public resulting in the automatic conversion of the Series A Preferred into Common Shares), each holder of the Series A Preferred shall have the right to purchase such holder's pro-rata percentage of such equity securities.

**Stockholders' Agreement:** The "Founders, the Common Stockholders, and the holders of the Series A Preferred will execute a Stockholders' Agreement with the Company which will provide for the following:

**Right of First Refusal:** The Stockholders' Agreement will provide the holders of Series A Preferred with a right of first refusal in the event the Founders propose to sell any Common Shares (except sales of up to 10% of the Common Shares held by the Founders on the Closing Date) owned by them at the same price and on the same terms as offered. Such right of first refusal will be pro-rata among the holders of the Series A Preferred.

**Co-Sale Rights:** The Stockholders' Agreement will also provide the holders of Series A Preferred with a right of co-sale providing that before the Founders may sell any of their Common Shares (except sales of up to 10% of the Common Shares held by the Founders on the Closing Date) they shall first give the holders of the Series A Preferred an opportunity to participate in such sale on a basis proportionate to the amount of shares held by the Founders and those held by the holders of the Series A Preferred.

The Stockholders' Agreement will terminate when the Founders no longer own any Common Shares, or upon a public offering resulting in the automatic conversion of the Series A Preferred into Common Shares, or a sale of the Company for cash or marketable securities.

**Other Agreements:** The Founders have entered or will enter into non-competition, no hire agreements with the Company, and all of the Company's employees have entered or will enter into proprietary information and inventions agreements. The Company will provide the Purchasers with copies of all of the foregoing agreements, all of which will be revised to the extent such existing agreements are not reasonably acceptable to the Purchasers.

**Key Man Insurance:** At this time, the Company does not have key-man insurance. If at anytime such policies are purchased, the Company will be the beneficiary of the policies.

**Stock Purchase Agreement:** The purchase of the Series A Preferred will be made pursuant to a Stock Purchase Agreement drafted by Purchasers' counsel and acceptable to the Purchasers and the Company. Such agreement shall contain, among other things, appropriate representations and warranties of the Company, covenants of the Company reflecting the provisions set forth herein and appropriate conditions of closing, including, among other things, intellectual property rights, the qualification of the Series A Preferred Shares under applicable "Blue Sky" laws, and opinions of counsel, including opinions of foreign counsel and foreign regulatory approvals, if required.

**Incentive Stock Options:** At the time of Closing, an employee option plan including incentive stock options will be proposed to be put in place as a condition of the Series B Preferred closing. The total number of options will represent 15% of the Company fully-diluted post-closing; 9% of which shall be allocated to the 2 Founders.

The options will vest according to the following schedule:

% of Options	Vesting Period
16.67 %	6 months after being awarded



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Remaining 83.33%

In 30 equal monthly installments  
calculated in arrears after the first  
six months of being awarded

**Right of First Refusal:** Common Shares held by employees of the Company shall not be freely transferable. If the holders of the Series A Preferred waive the restrictions on transfer of Common Shares held by an employee, the Company first and the holders of the Series A Preferred second, shall have a right of first refusal upon the disposition of such Common Shares (whether acquired upon exercise of options or otherwise) except the disposition of such Common Shares pursuant to a registered offering. To the extent all or part of such Common Shares are not purchased by the Company or the holders of the Series A Preferred, the transferor may sell to third parties on terms no more favorable for a period of up to six months. Any of such Common Shares transferred pursuant to this paragraph must be offered at the Fair Market Value (to be determined by the Board of Directors).

**Employment Contracts:** As a condition to Closing, the Founders will sign employment contracts which will provide for the following:

The Founders will report to the Board of Directors and their employment may be terminated by a majority vote of the Board.

If the Founder leaves the Company for any reason (except if the Founder's employment is terminated without cause\*), his unvested incentive stock options (if he holds any) will terminate. Any unvested incentive stock options held by any Founder upon termination without cause will be automatically vested upon such termination.

If any Founders' employment is terminated by the Company without cause or if he resigns for good reason,\* the Founders will be entitled to severance of one year's salary and will agree not to compete or hire the Company's employees for a period of one year. If any Founder leaves the Company of his own accord or is terminated for cause, unless he resigns for good reason, such Founder will be subject to a two-year non-compete and no-hire agreement with no severance obligations. If a Founder is terminated for cause or a Founder's employment is terminated upon death, permanent disability or resignation (other than for good reason), the Company first and the holders of the Series A Preferred second, will have the right to purchase the Founders' Common Shares at Fair Market Value (to be determined by an independent third party agreed to by both the Founders and the Board). If a Founder is terminated without cause or resigns for good reason, there is no such repurchase right. If any Founder is terminated for cause, his unvested options (if he holds any) will terminate.

The two founders will be entitled to annual salaries of \$90,000 each. Thereafter, any increase in the Founders' salary or annual bonus compensation plans will be determined by the compensation committee of the Board. As used herein, "Fair Market Value" shall mean an amount determined by an independent third party mutually agreed to by the Founders and the Board.

**Capitalization:** The attached capitalization schedule details all of the securities that will be outstanding after the closing.

**Transfer/Assignment:** All rights granted to the holders of the Series A Preferred pursuant to the Stock Purchase Agreement will be freely assignable to future holders of Series A Preferred. The Series A Preferred will be freely transferable.

**Expenses:** All Legal fees for Purchasers' counsel in connection with this Offering will be paid by the Purchaser.

**Exclusive Dealings:** Until January 31, 2002, the Company will deal exclusively with the Purchasers, their affiliates and other mutually agreed upon parties regarding any sale of equity of the Company, and will not solicit or engage in any discussions with or provide any information to any third party regarding such transaction.

**Asset Acquisition Agreement  
EdgeCase Software, Inc.**

Incorporation: The Company will be incorporated in California.

Targeted Closing Date: January 31, 2002

The foregoing term sheet is subject to (i) the satisfactory completion of due diligence by the Purchasers including a review of the terms and conditions of the Series A Preferred, (ii) review by counsel to the Purchasers and the execution of definitive documentation mutually acceptable to Company and Purchasers and (iii) waiver by the requisite amount of the holders of all other series of preferred stock of the Company of all preemptive and any other rights which would prevent or conflict with the consummation of any of the transactions contemplated herein and (iv) Hart-Scott Rodino Act approval, if necessary.

Agreed and Accepted:

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Nicholas J. Dauderman, President & CEO  
EdgeCast Software, Inc.  
5031 Birch St. Suite I  
Newport Beach, CA 92660

Date

December 31, 2001

**Exhibit A  
(Bill of Sale)**

**BILL OF SALE**

For valuable consideration, receipt of which is hereby acknowledged, Harvest EVu, LLC, a Delaware limited liability company ("Seller"), hereby sells, transfers, conveys and assigns to EdgeCast Software, Inc., a California corporation ("Buyer"), all of Seller's right, title and interest in and to the Purchased Assets, as such term is defined in that certain Asset Acquisition Agreement dated December 31, 2001 among EdgeCast, Inc. and others (the "Sale Agreement"). Seller represents and warrants to Buyer that Seller has all lawful right and authority to sell, transfer and convey to Buyer the Purchased Assets and that Seller sells, transfers and conveys the Purchased Assets to Buyer free and clear of all liens, claims and encumbrances of any kind whatsoever.

Seller hereby covenants that Seller will, at any time and from time to time upon written request therefor, execute and deliver to Buyer, its successors and assigns, such documents and instruments as Buyer may request in order fully to assign and transfer and vest the Purchased Assets in Buyer, its successors and assigns, and to protect Buyer's right, title and interest in and to all of the Purchased Assets or to enable Buyer, its successors and assigns, to realize upon or otherwise enjoy such rights and property.

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns, forever.

This Bill of Sale is made concurrently with and incidental to the closing of the sale of assets pursuant to the Sale Agreement described above.

Dated: December 31, 2001.

**SELLER:**

**Harvest EVu, LLC, a Delaware corporation**

By: 

Its: Manager.